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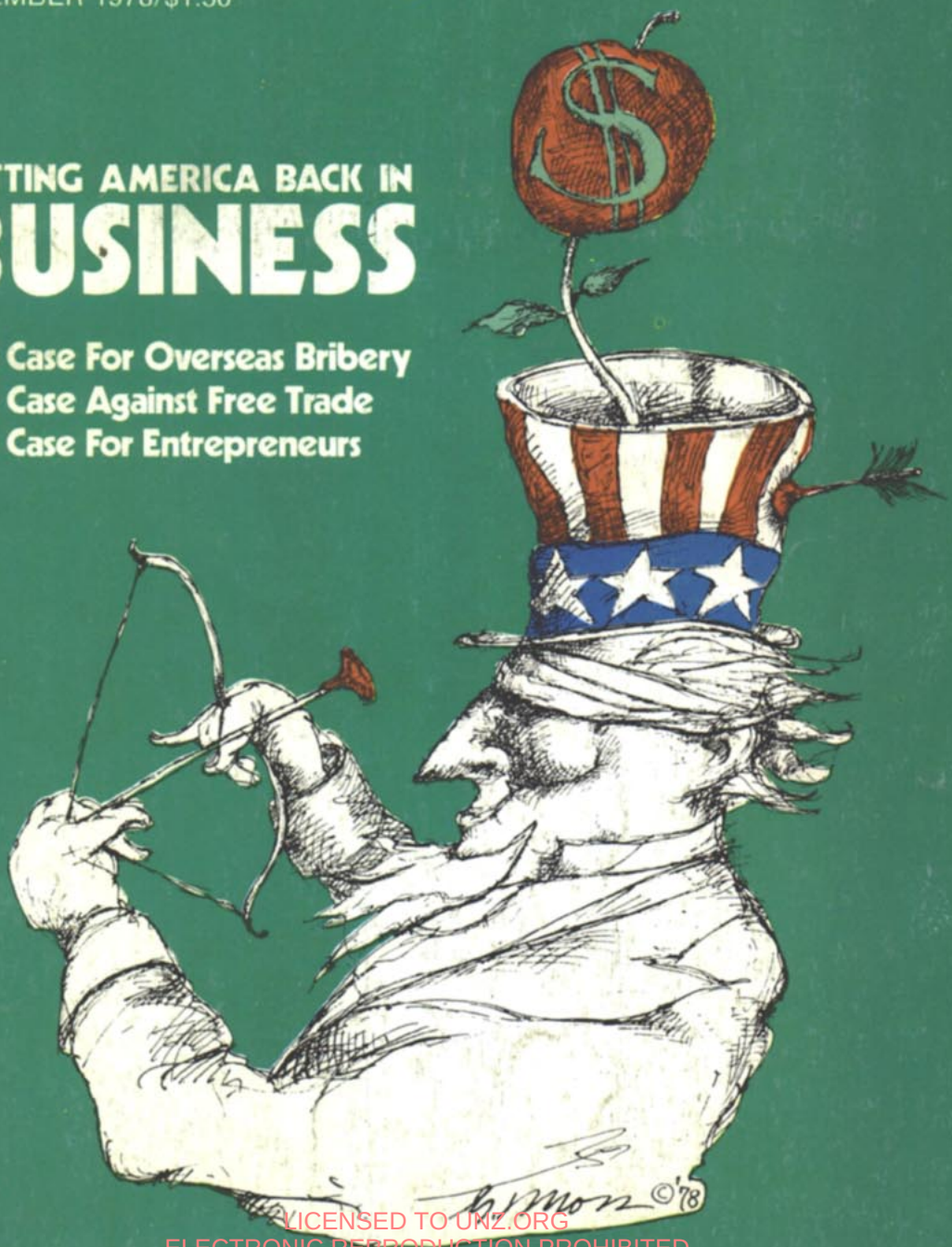

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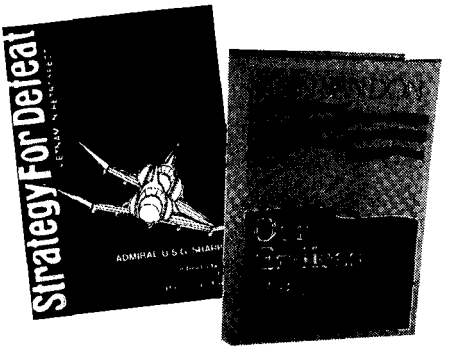

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Letters

In regard to September's "Tilting at Windmills," the blatant naivete of your statement that "Volunteers could easily be trained to meet most of the needs of the elderly and could bring to their work the kind of concern and warmth that is increasingly lacking in our health professionals" is amazing to me.

In case you haven't noticed, no one is able (even if willing) to do much in our society on a volunteer basis any more. Something like 42 per cent of the women in this country *work* for pay—they were the ones over the past 50 to 100 years who used to do most of the "volunteer" work, because they were economically "free." I frankly doubt that volunteers could even be *found* "easily." Many people would like to be able to volunteer—both male and female—but most of them can't afford to "volunteer" to do anything. . . .

Wake up, Mr. Peters! I agree that it would be nice if we could get back to the great humane era of volunteer labor, but short of setting women into their 19th-century "economic slave status" I don't see how it can be done. And even though I think volunteerism is a good way to go—in terms of creating a more compassionate society—as a woman, I am not willing to pay the price of going back to that era.

NANCY L. SNIDER
Santa Barbara, California

See Charles Peters' response in Tilting at Windmills.

As an HEW employee, I can provide another perspective to Blythe Babyak's article, "Califano's Cigarette Campaign" [July/August]. Ms. Babyak implies that the only bona fide gesture in that campaign was the curtailing of smoking in HEW buildings. In my opinion, this aspect of the program was as half-hearted as the rest.

Early in January HEW employees received an announcement of Califano's new policy. It indicated that further guidelines appeared in Chapter 1-60 of the General Administration Manual. I consulted the Keeper-of-the-Manuals; alas, she had never heard of Chapter 1-60. Next I wrote a memo to Zeus (as he is affectionately called), requesting clarification and offering assistance in enforcing the policy. After two months without a reply, I attempted to track down my memo. The Specialist-on-Smoking finally located it under a pile of travel vouchers. He promised to contact me "shortly." "Shortly" apparently meant "after the next tobacco harvest."

In June a fat envelope from the Center for Disease Control in Atlanta appeared in my office mailbox. It turned out to be the response to my January memo.

Included in the package were two speeches by Califano *and* Chapter 1-60, which is becoming a collector's item. The "meat" occurs on the last page. ". . . an employee [who] feels . . . this policy [is] not being implemented is entitled to utilize . . . the grievance procedure." The prospect of filing a grievance for each anonymous cigarette puffed into your face is ridiculous. And if this grievance option were sufficiently publicized, the current backlog of grievances could double. Surely, some more efficient means of enforcement could be devised, *if* the effort were sincere.

No, Califano didn't stop the smoking; in fact, he added a lot of smoldering.

HANNAH KLEIN
Silver Spring, Maryland

Harry Lesser's review of Eugene McCarthy's *America Revisited: 150 Years After De Tocqueville* in your July/August issue perfectly suits the reviewer's name. Perhaps because of the reviewer's haste to score points off a man whom it has grown fashionable to scorn, lesser understanding could hardly have been shown of an American political activist who propelled many people, Mr. Lesser possibly included, into politics.

I for one cannot see it as a shortcoming that Eugene McCarthy, in his speeches and writings, takes an interdisciplinary approach to political problems. In fact, I have always seen it as one of the strengths that distinguishes him from a normal, party-regular or dim-bulb, politician.

It is the height of illogic to deride a man in one sentence for not proposing solutions, then in the next to demean the solutions he does propose; yet Mr. Lesser manages this feat within one maladroit paragraph.

The assertion that McCarthy lacks first-hand observation of America and of Americans is, of course, ludicrous. If *Washington Monthly* is to be taken seriously as a magazine of commentary on politics or on political books, it will have to do better than it did on McCarthy's *America Revisited.*

JAMES M. YEAGER
Washington, D.C.

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ceremonies?... The film that opens the CBS pre-game show called "The NFL Today" is a depressing comment on what CBS thinks is appealing about pro football. There is only one shot of a great catch and one shot of a great run, but there are a dozen shots of men doing violence to other men, including one of a player stamping his foot into an opponent's back in a way presumably intended to thrill the audience with visions of a fractured spine.

Last month I was bragging about the progress we had made in eliminating racial hatred from American life. Within the next week came the news of the Klan revival in Alabama and of Calvin Griffith's remarks in Minnesota. I still think things are much better than they were 15 or 20 years ago, but in case you missed the Griffith statement, it follows as a reminder of the way almost all of us used to think. Griffith said that he decided to move the Twins to Minnesota from Washington, D.C. in 1961 "when I found out you only had 15,000 blacks here. Black people don't go to ball games, but they'll fill up a wrestling ring and put up such a chant it'll scare you to death. It's unbelievable. We came here because you've got good, hard-working white people here."...

In a recent column, William Safire noted that the free parking space he had when he worked at the White House was worth $80 a month. He was not alone. The government subsidizes the parking of tens of thousands of its employees in the District of Columbia. This tends to encourage these employees to drive to work. At the same time, the government is spending tens of millions of dollars on a subway system for the District, designed to get these same employees *not* to drive to work.

I have a weakness for Nixon and Ford stories of the following kind—these are from *Fall in and Cheer*, a forthcoming book by Nixon-Ford speechwriter, John R. Coyne, Jr.:

"Ford's problems with words were to become legendary, as when he mentioned the disease 'sickle cell Armenia'; introduced Elliot Richardson as 'Elliot Roosevelt'; referred to the 'great people of Israel' in a toast to Anwar Sadat; praised the 'ethnic of honest work' in New Hampshire; pronounced 'holocaust' as 'holy coast.' Perhaps the single best one came at a White House breakfast, when he announced that Daniel Moynihan's successor at the U.N. 'will follow the same policy of challenging some of the Third and Fourth World powers, calling a spade a spade.'"

"A state trooper escorting a motorcade had lost control of his bike and was thrown, the bike falling across his legs and breaking one of them. Nixon, so the story goes, stopped the motorcade, stepped out, and asked the writhing trooper, 'How do you like your work?'"

"Then there was the artisan who brought a nailless, intricately constructed, hand-carved chair to the White House. Nixon sat in it, it collapsed, and he fell on the floor. 'How long did it take you to make this?' he politely asked the craftsman.

"Nevertheless, during the last year many of the incidents seemed to involve a bit more than a somewhat awkward man who frequently failed to say the right thing. During a photo session, for instance, he asked the assembled newsmen if they had noticed that his face was somewhat puffy and his eyes red and swollen. Then he nodded, turned to go, and said, 'Walnuts.'"

Senator Alan Cranston is the winemakers' friend. He was behind the attempt to get a tax break for the Gallo family. But don't leap to the conclusion that he gives preferential treatment only to the rich. He is also a friend of the home winemaker and a supporter

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of H.R. 1337, a bill that will repeal the requirement that home winemakers register with the Bureau of Alcohol, Tobacco, and Firearms, as approximately 20,000 citizens do annually. The bureau receives and files their registration forms. Clerks read them to see that the proper boxes are checked. The form is stamped and a copy is sent to the home winemaker. Nothing else is done. Registration has been required by law since 1933. No one has ever been prosecuted for failing to register, and no information in the form has ever led to an investigation. The bureau is now willing to forego registration of home winemakers but wants to register home beer brewers instead. So Cranston has extended his friendship to the home brewer and asked the bureau and its parent, the Treasury Department, why. He reports:

"No one speaking for BATF or Treasury can say definitely and convincingly why it is necessary to require home alcoholic beverage makers to register with the government. The Office of General Counsel thinks it is a requirement of the regulatory office and the regulatory people think it is a requirement of the criminal enforcement branch which, in turn, is silent on the question, but when pressed will admit, informally, that the notion originated many years ago with two officials, long since retired." . . .

Nancy Snider (see "Letters," p. 4) seems to think that the future of voluntarism is tied to the willingness of women to be economic slaves. I see the major source of volunteers as young people—men as well as women—in their twenties, before they have children and the financial responsibilities that children involve. The second major source of volunteers I see is older people—again men and women—who have finished rearing their children and no longer have that fiscal burden. . . . Daniel Greenberg, the science writer, has raised a troubling issue. "By and large," he says, "science is a shrinking enterprise on the American industrial scene, whereas in West Germany and Japan, it's coming up fast." Greenberg attributes part of the problem to the priority American industry is giving to research that promises short-term payoffs. He also says, "The scarcity economy in academic science has spawned a spirit of caution among young researchers anxious to make their mark. Department chairmen report that doctoral candidates are increasingly shunning longshot thesis projects in favor of safe and sure problems." . . .

The inevitable book of the year is in the schedule of World Publications. It's called *The Complete Woman Runner*. . . . I was in the hospital last month. On the back of the door was the sign:

> Please arrange to vacate your room by 10 a.m. discharge time. An additional charge will be made after 10 a.m. This charge is not covered by insurance.

In other words, the hospital knows that its rooms will not be vacated at 10 a.m. if the patients think their insurance will pay for it. Here, then, we have in capsule form a large part of the explanation for our inflated health costs. People will be careless about expense as long as it is covered by insurance, so the hospitals and doctors can charge pretty much what they want to charge.

We were wrong—that is those of us who had thought that one of the great outrages of the federal bureaucracy, the annual awarding of "merit" pay increases to over 99 per cent of eligible federal employees, would be stopped (at least for GS-13s and above) by the new civil service law. According to Joseph Young, the authoritative civil service columnist of *The Washington Star*, "Civil Service Commission officials say that federal employees in grades below GS-13 as well as professionals above will continue to receive virtually automatic in-step pay

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raises."... At a time when we're threatened by double-digit inflation, we have a Congress that has cut income taxes but has left on the books the massive increase in the social security tax scheduled for January. A decrease in income tax cannot be called one of the classic weapons against inflation, and what will happen because of the increase in social security payroll tax? Businesses will view it, as they always have done, as an added cost of labor and pass it on to the consumer in the form of higher prices.... A task force that is taking a look at the government's use of computers has concluded, according to Brad Schultz of *Computerworld*, that "the nation's security is jeopardized by the waste, inefficiency, and unreliability" of the data processing facilities in the Department of Defense. Most Air Force computer sites are vulnerable to nuclear attack or sabotage, the task force found. The Army is said to lack the quantity or quality of officers needed to develop automated tactical systems, while the Navy's management cannot effectively administer data processing facilities despite the fact that most Naval functions depend on data processing. The task force found that no individual in the Navy "is even cognizant of all computer-related activities and costs." Two trusted sources of my own confirm what *Computerworld* says about the Navy, so I suspect it is right about the other services as well.... All of us who favor a national health service should take a closer look at the case of St. Elizabeth's, the mental hospital in the District of Columbia. It is operated by HEW, and it is a disaster, having lost its accreditation in 1975 because of numerous deficiencies in the quality of the care it was providing. The government has now given up part of the battle and has signed an agreement with Georgetown University Medical School providing for the school to assume responsibilty for the physical health care of St. Elizabeth's patients.... In our January 1978 issue, Michael Nelson, after interviewing people in three small towns, wrote that "popular dissatisfaction with government stems from its failure to deliver on promised services," not from dissatisfaction with government itself. In October, *The Washington Post*, after surveying 1,756 people throughout the country found the same thing....

One of the craziest bills to be proposed in recent years is the one to give the airlines $4 billion to finance the acquisition of new planes that will comply with noise regulations. The airlines have known about the need to comply since 1969. They have until 1985 to do it. They need new aircraft anyway because many of their present planes are old and inefficient. And the airlines are making money these days and don't need help. But the craziest thing about the bill is that it makes the amount of aid each airline receives dependent on its ticket revenues. So, as Rep. Richard Gephardt has pointed out, airlines would receive the most aid during their periods of highest profits.... The unattractive side of democracy was never better illustrated than in the recent Senate hearings on the confirmation of Norval Morris as head of the Law Enforcement Assistance Administration. Morris had written a book advocating such things as gun control and the decriminalization of victimless crimes so that law enforcement officers could concentrate on violent crime and stop chasing vagrants, drunks, gamblers, and homosexuals. Under harsh questioning by Senators Helms, Hatch, and Thurmond, Morris explained, according to Charles Babcock of *The Washington Post*, that his advocacy of "domestic disarmament" referred only to handguns, that his views had been "utopian," "rather science fiction," "stupid simplification," and "inept overstatement." "I hope you can forgive me for it," he said, adding that, if confirmed, he might impose "a moratorium on the greater spread of my views."

—*Charles Peters*

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Independent Oilmen: Why They Take the Risks

by Nicholas Lemann

On the southern edge of Amarillo, Texas, on an access road beside a highway, sandwiched between D&B Equipment and Pools by Tenorio, stands a building called the Oil Center, which is home to eleven independent oilmen. The Oil Center is set back behind a parking lot full of potholes, the entrance to which is guarded by two Versailles-style lanterns, both broken. The building itself is one story high and, aside from a glass door, windowless. Its roof and walls are made of aluminum siding; a decorative brick facade in front is missing quite a few of its bricks.

In a tiny office in the Oil Center, a single room jammed with maps, photographs, geological logs, country-music tape cassettes, vitamin pills, and books, works Jack G. Jones, self-employed petroleum geologist. Jones is a leathery, friendly, voluble man of 47 who wears polyester suits, cowboy boots, and wraparound sunglasses and drives a midnight blue Lincoln Continental. He makes a generous living by drilling for natural gas—guessing where it might be found, acquiring the right to drill for it, amassing the money necessary to operate a rig, and then, if he finds gas, selling it to a pipeline company.

If you're a liberal like me, a Texas

Nicholas Lemann is a contributing editor of The Washington Monthly. *The research for this article grew out of a larger writing project on the oil business for* Texas Monthly.

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oilman like Jack Jones is one of the most potent symbols of what's wrong with America. Before actually encountering any of them, I had a pretty firm idea of what a Texas oilman was like. Swaggering, boastful, greedy, by day he raped the landscape in search of slimy crude, by night returned to his mansion, swimming pool, and Cadillac, to revel (in the company of his mink-coated wife, or perhaps a flossy showgirl) in the abundant fruits of his meager labors. Perhaps at dinnertime, while tearing into a thick slab of beef, he'd complain about bureaucrats and welfare cheaters, interrupting himself to order his trembling servants to bring him another Scotch. For culture, the arts, reading, anyone's problems but his own, he cared not at all. Money was his only goal, and he had accumulated it not through intelligence or hard work, but pure dumb luck. I would have agreed fervently with Irving Howe, when he said, in a recent issue of *The New Republic,* "My strong impression is that most of the people who have done the most to make our life better—from Jonas Salk to George Balanchine, from Walter Reuther to Arthur Schnabel—have been content with relatively modest material rewards." I would have nodded approvingly when Howe quoted Marx on the repulsiveness of rich men and added, "This speaks to a visible reality, the reality of J. Paul Getty, Howard Hughes, H.L. Hunt, and a thousand others." It's no accident that none of Howe's exemplars of virtue were in business or that his three anti-heroes all got rich through oil.

If, on the other hand, you're a conservative, you probably regard people like Jack G. Jones as a dying breed—a mix of appealing self-reliance and unappealing unsophistication, but certainly unimportant economically in this age of the large corporation. In the oil business, especially, you might think, this is a time when the advantages of the corporation are most readily apparent because oil is

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desperately needed but very expensive to find, in terms both of drilling costs and of expertise. It takes, you would think, huge companies with huge capital reserves and substantial borrowing power, and generous incentives from the government, to keep America running.

So as the war continues to rage between liberals and conservatives, one of the rare points of agreement is the writing-off of the entrepreneur. In recent writings, both Irving Howe and Irving Kristol have pronounced him dead as a significant factor in American economic life—"a handy myth for conservative ideologues," Howe called him. The liberals preach expansion of the welfare state and controls on business; the conservatives preach economic growth through an unfettered private enterprise system; but the forum for each side's plans for America is the large bureaucratic organization, either the federal government or the big corporations, depending on your persuasion.

This seems reasonable in the case of the oil business until you take a closer look at the role the independents play. In 1972 the major oil companies found 38 new domestic oil fields; the independents, 317. In natural gas, the majors found 127 new fields; the independents, 285. The majors had 562 exploratory successes in all that year; the independents, 1,485. The independents account for about 30 per cent of the oil industry's expenditures, drill 88 per cent of the wells, and have a 47.3 per cent success rate in exploratory drilling, as opposed to the majors' 30.8 per cent. Of course, the majors' oil finds—the North Slopes and Baltimore canyons—are generally much larger than the independents', but even so the independents drill about half the oil and gas in America. The independents are in fact probably more important to our domestic oil production than these figures indicate, because often a major company will buy up a field and produce from it after an independent finds it.

An independent oil company, by the standard definition, is one involved only in the exploration and production end of the business, as opposed to the large integrated companies that refine and sell oil as well as finding it. Some of the independents are large companies, but most are small operations with one or two principals. They're also far more risk-prone than the majors. In 1957 there were about 20,000 independents in the country; in 1973, following a period when foreign oil was cheap and readily available, there were only 10,000. People like Jack G. Jones, far from being dwarfed by the big corporations in their business, are the ones who find most of the oil and gas in this country, despite having far smaller resources at their disposal. So the questions of how they do it and why they're so successful are important. What makes the independents go might be, if writ large, what could make America go too.

Drilling on a Hunch

All of the reasons for the independents' success are object lessons in what entrepreneurs can do better than large corporations. Though the majors have more money, the sheer numbers of the independents greatly increase the odds of their finding new oil. While the majors do many things, the independents can concentrate on one—they plow back 95 per cent of their revenues into the oilfields, as against 56 per cent for the majors. The majors have tremendous overhead costs that prohibit their drilling smaller wells to find smaller fields; the independents can operate much more

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cheaply and can therefore profitably drill a million-barrel field on which a major would lose money. A less quantifiable but nonetheless important reason for the success of the independents is that they're less bureaucratic than the majors. An independent oilman is by definition someone who doesn't mind taking a gamble and can drill on a hunch if he so desires; at the majors, exploratory efforts have to go through the usual channels to be approved. As is true in life generally, the former approach can often produce results that the latter doesn't.

The majors and the independents have a curiously symbiotic relationship. The typical independent got his start working for a major company, getting a free education in finding and drilling oil, and left in mid-career because he wanted to be in business for himself. But most of the oil the independents find eventually makes its way (via a series of middlemen) into the hands of the majors. In effect, the majors figure the extra cost of buying this oil instead of drilling it themselves is offset by the risk the independents assume. And if an independent should stumble onto a major field, the majors can always buy him out or buy the surrounding land. The role of the independents in the oil business is similar to that of the old, pre-farm-club minor leagues in baseball, Off-Off-Broadway in the theater, or state legislatures in national politics—they produce many of the discoveries that keep the large, dominant institutions strong.

'I've Done Everything'

Jack G. Jones was born in Warsaw, North Carolina, the son of a tobacco farmer who was killed in a car accident when his son was seven years old. He went to high school in Nashville, Georgia, worked as a newspaper boy, a drugstore clerk, a night watchman, a shoe salesman, a factory worker, and a tobacco harvester, and then joined the Navy. Once he was hitchhiking home

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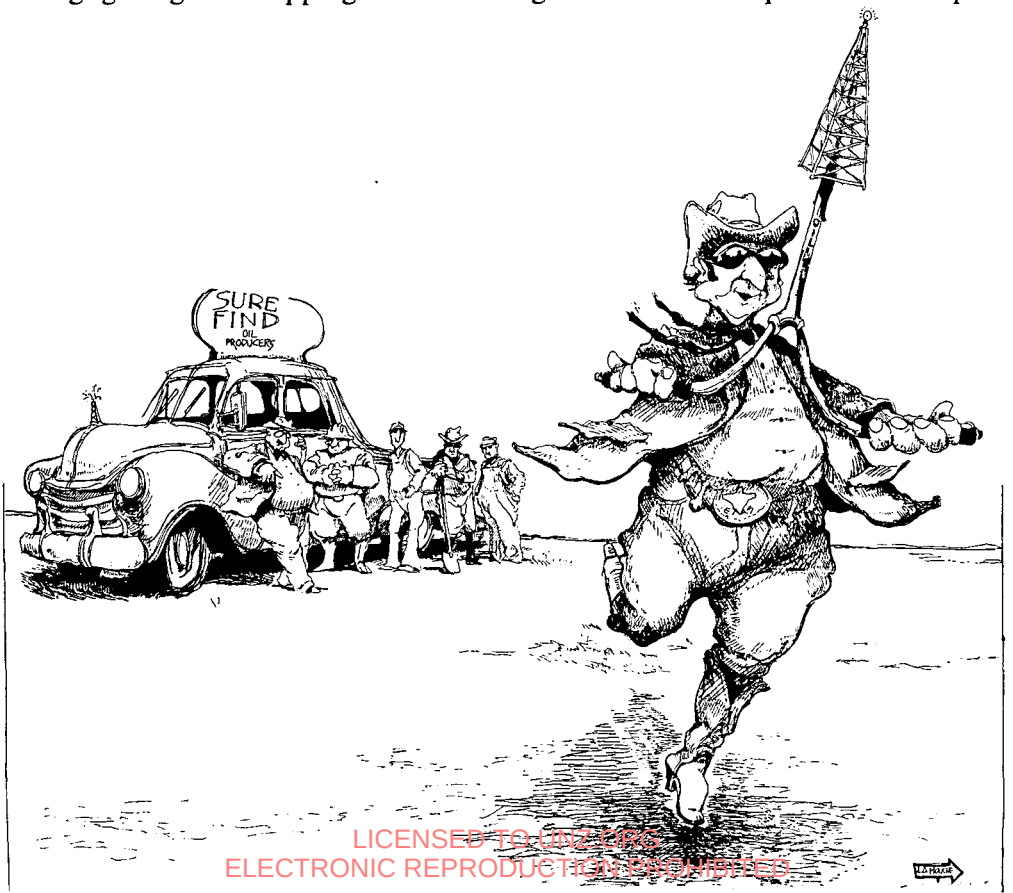
from his base and was picked up by an old oil wildcatter from Homer, Louisiana, named Franklin B. King. King, Jones says, looked like a thin Colonel Sanders.

King asked Jones if he was planning on making the Navy a career, and Jones said no, he wasn't. "Well then," King said, "why don't you become a geologist. That's one of the last frontiers where you can start out poor and become wealthy." King told Jones that if he studied geology at either the Colorado School of Mines or the University of Oklahoma, and if he made straight As, there would be a job waiting for him when he got out. Jones chose Oklahoma and did indeed make straight As; when he got his master's degree in 1957 he had eight job offers. On the advice of a trusted professor, he chose Humble Oil, then an independently operated subsidiary of Standard Oil of New Jersey, now a part of Exxon. After a year with the company Jones was placed in its Amarillo office, doing geological mapping and field work in the Texas Panhandle. In 1962 the company put him under a supervisor he didn't get along with, and as a result he got mediocre evaluation reports and his career stagnated. In 1965 the company was centralizing, and it decided to close down the Amarillo office. Jones was told that if he accepted an assignment in Libya for two or three years and did well there, he could come back to the States with a clean slate. Jones chose to quit.

He first went into business as a beer distributor but failed after six months. Then he went to work for Amarillo Oil, a large independent, for four years, leaving when the company got a new president he didn't like. That was when he became an independent oilman. He had an office he'd built in his backyard and $700 in the bank. I asked Jones whether it had been frightening going into business for himself at 40, having been on a salary for most of his working life, having failed to set the world on fire at Exxon, and having gone broke in his previous attempt at



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self-employment. "No, I wasn't," he said. "I've done everything. There's not much I can't do. I fly my own plane. I drive my own trucks. I can operate heavy machinery. There's damn little I can't do."

For most of us, the money in our lives is measured in salary; for an independent oilman, it's measured in equity. When most of us make an investment, it's for a house or a car or stocks or bonds; when an independent oilman does, it's for his livelihood. The income tax laws are written with the salaried in mind and make few adjustments for the wild income fluctuations and different nature of investments in an entrepreneur's life. Tax breaks for investment, for most of us, can be an incentive to play the market; for Jack Jones they determine whether or not he can drill. An independent oilman's primary objectives in steering a well through the labyrinth of funding is to raise venture capital and to hang on to as large a percentage of the ownership as possible, a financial problem most of us never run across.

If the independent is a geologist like Jones, he'll start by poring over maps and past drilling records until he comes upon a place where he thinks there's oil or gas to be found. He may do seismic testing on the land to lessen the odds against him. Then he has to acquire the right to drill. If the land is privately owned, he has to talk the owner into selling him an oil lease. If it's already under lease to someone who's not drilling it, he can arrange to sublet it (this is called a farm-out). Often little or no cash changes hands in these transactions. The lessor gets an eighth or a sixteenth or a thirty-second of the well instead.

Now the oilman has to get the money to drill, which in Jones' case usually amounts to about $300,000. Except in the rarest of circumstances, banks won't lend money for exploratory drilling—it's too risky. So an independent who doesn't have capital of his own—as Jones didn't when he was starting out—has to raise the money from private investors, in exchange for a piece of the action. Like the independent himself, these are people who like to take chances with their money. They might be local businessmen or doctors, friends or relatives, professional oil investors, or a "fund company," which finances wells and then sells its investments to other investors.

With the money, the independent will hire a drilling contractor to drill in a particular spot, to a specified depth, and to encase the hole in a concrete pipe. Then the driller leaves and another contractor, an electric logger, comes in. The logger sends an instrument down the hole and produces a series of logs—endless thin strips of paper with squiggly lines running down them that represent the porosity, electromagnetivity, and other properties of the rock surrounding the hole. By studying these, a geologist can make a good guess as to where along the concrete pipe there might be oil or gas. He then brings in another contractor, who lowers explosives to precise depths in the pipe and blows holes in it. If there's oil or gas there, it will seep up the pipe to the wellhead, where it is stored and eventually taken away by the company that buys it. Or it might be a dry hole, in which case the $300,000 and the independent's time are for naught.

Jones started out by acquiring leases and selling them to bigger independents, who operated the wells. But in the last couple of years he has begun to be an operator himself, and as his capital increases, so does his share of the take when he hits. His batting average so far is excellent—in his career as an independent he has been involved in 20 wells, of which only three have been dry holes. He plans now to operate more wells and to drill higher-risk projects, staying away from areas near previous finds and trying for bigger scores.

Certainly a large part of why he does it is the money. "When you've been poor all your life," he says, "money is an important factor. For instance, I've

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always dreamed of having an airplane and now I have one, a little Bonanza." Money has an importance for the independent that it doesn't have for the aspiring actor or ballplayer because it's his single standard of success. There's no such thing as a well that loses money but is a critical success. There are no cheering audiences. You don't get your picture in the paper. More than that, for a person without a salary, whom a bad year could utterly wipe out, what seems like an awful lot of money is necessary to provide the security that everybody else already has, along with the freedom to thumb your nose at the world that's so important to most independents. Every liberal professor can extol at length the wonderfully liberating effect of academic tenure, but few can see that for an entrepreneur, money in the bank is exactly the same thing. Of course, there's a definite point where that kind of freedom is reached, and oilmen shouldn't be allowed to get away with convincing the world that they need infinite millions to feel truly independent; that aside, their interest in money shouldn't be seen as a sign of fatal moral defects.

Anyway, Jones says money isn't the most important factor in his business. He says it's "the self-satisfaction of achieving." Most independents have spent a lifetime in the oilfields, and most of them love it—finding places to drill where nobody else has thought of drilling, putting together a deal, running their own operation the way they think it should be run, and then, maybe, finding a new field. "Most independents are in it for the romance," another independent told me, "but most of them won't admit it."

The romantic and acquisitive sides of the independent's character combine in a rich hatred of the federal government that practically all of them share. Independents complain bitterly about being bogged down in a sticky morass of paperwork and regulations, in a tone that would be familiar to readers of Ayn Rand novels. They see themselves as self-reliant, tremendously productive people under constant attack from lily-livered, parasitic bureaucrats. Texans like to point out, with triumphant illogic, that the Department of Energy spends $20 billion a year and has never found a gallon of oil.

In understanding their hatred of federal paperwork, it's necessary to understand that independent oilmen are not the type who fit comfortably into organizational life. In 1967 a female auditor from the IRS called on Jones and, he says, "inferred I was lying. I said if she was a different gender I'd rearrange her face, and threw her out of the office." Then he went to Dallas and told the regional director there what he thought of the IRS. Every year since, Jones says, he has been audited. His accountant now handles all his dealings with the IRS—"I don't care to see 'em because I get a little emotional."

Besides taxes, there are some regulations governing drilling sites. Portable toilets are required, the bottom steps of ladders have to be painted yellow, and sometimes the OSHA inspectors come around. All that, however, is the concern of the drilling contractor and not Jones, as are the minimum wage and workmen's compensation. To drill on private property in Texas, Jones has only to fill out a one-page form from the Texas Railroad Commission; to drill on federal parkland requires a lot of paperwork, mostly for environmental reasons. I asked Jones how many federal agencies he deals with, and he said, "Just pick a number. They're all in the act. I never see the forms. I have men who take care of that for me. But they're unreal." Another independent told me he has to file "many, many thousands of forms for the government. Instead of free enterprise, we've got bureaucratic regulations. They're a bunch of traitors in Washington. Instead of encouraging finding oil they've tried to stop it." When I asked him to tell me what, specifically, some of the paperwork was, he thought for a minute, couldn't think of any good

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examples, and told me to talk to his accountant for the particulars. When I did, all he could think of was taxes and price regulations.

Price regulations are where the government's effect on the oil business rises above the symbolic level. There are two sets of such regulations, one for oil and one for gas. The aim of both is to keep low what consumers pay for energy. Natural gas is unregulated when it's sold within a state, but there's a strict ceiling on the interstate price. As a result, in a producing state like Texas where under normal conditions intrastate gas would be cheaper than interstate, in fact the reverse is true. There are also price ceilings on oil—an extremely low one for oil from old fields and a much more generous one for new oil. The new oil-old oil distinction is a complicated one and the source of a lot of litigation; but the most significant point in the dispute between the oil business and the government is whether the price ceilings have lowered the incentive to drill so much that we aren't getting as much oil and gas as we need.

Whether or not this is true is the subject of constant debate, in which the main weapons are studies of oil reserves and future consumption commissioned by the two opposing camps. What non-speculative evidence there is is hard to judge because the years since the embargo have been such good ones for the oil business anyway. Since 1973 about 1,500 new independents have entered the business, and domestic drilling has been booming. Natural gas producers sometimes complain that it's no longer profitable to drill for sale on the interstate market, but Jones makes a handsome living selling natural gas to the interstate pipelines and says he doesn't know of anyone who has refrained from producing proven wells because of the low price. Independent oilmen generally concentrate totally on drilling, and for the most part they just don't care what somebody they've never met in New York has to pay for utilities. They can be relied on to oppose any tax, any price control, anything that interferes with the untrammeled drilling of wells and selling of petroleum. The large-scale social contract, when it touches their lives, makes them feel oppressed.

If the independents' political vision of themselves as tied-down Gullivers doesn't ring very true, it's no surprise—they don't fit into anyone's political cosmology very well. Independents who think they're crippled by paperwork and held back from drilling by regulations are far more numerous than independents who actually are so constrained. They habitually undersell their own drive to drill, which is much too strong for a little paperwork to kill.

Similarly, a Jack G. Jones falls into a great gap in American liberalism, the failure to appreciate productivity (growing, perhaps, from an inability to distinguish it from the profit motive). Jones not only helps heat people's homes, he stimulates employment and creates taxable wealth that, were he to retire tomorrow, might never be generated. This kind of wealth is crucial to the government's ability to heal the sick, feed the hungry, and push upward the disadvantaged. Encouraging people like Jones ought therefore to be a central part of the program of those who want to expand the state's benefits to the people who need them. It's not. Even so well-thought-out and impressive a liberal call to arms as Howe's in *The New Republic* just doesn't mention the issue of encouraging production.

Conservatives generally appreciate production but don't see that it springs from several different sources in the free enterprise system. Encouraging Shell won't necessarily also encourage Jack Jones, and saving a Lockheed won't boost free enterprise at all. A key part of the conservative program might be making sure that sizable small-business sectors flourish alongside the corporations in each industry in order to keep the industry strong. Conservatives also fail to be convincing in their stated devotion to the idea that healthy business is a means to an end (a healthy

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country), rather than the end itself. They almost never seem to see poverty or need or stagnation without prompting from the left.

Not every conservative deserves to be tarred with the accusation of not really understanding free enterprise, but examples certainly abound. Many of them can be found in the pages of *Fortune*, supposedly the epitome of capitalism. *Fortune* always stoutly defends economic concentration, missing or disagreeing with the point that diversity in any business is a great generator of ideas. Most recently, in discussing the rash of mergers among investment houses (which has led to the demise of many small and regional houses), a *Fortune* writer brought up the argument that fewer brokers will produce fewer ideas, soberly considered it for maybe half a sentence, and then pronounced it wrong.

Liking What You Do

The misapprehension of the importance of the entrepreneur in policy discussions is mirrored—maybe based—in similar misapprehensions about human motivation. Traditionally, liberals have felt that government operates with the public interest in mind and business with only the profit motive, so that the ability of anyone who makes a profit to contribute to the betterment of society is suspect (and, conversely, the devotion to the public good of anyone who works for a non-profit organization is unquestioned). Recently, the neo-conservatives have begun to attack this notion by weighing in with their own version of the motivational scheme: while business is out for profit, liberal professionals, civil servants, and professors comprise a "new class" that lusts, no less self-interestedly, after power instead of money. Farther on over to the right, in the Jack Kemp-Arthur Laffer tax cut camp, the theory is that the only way to create an innovative, prosperous society is through maximizing individual financial incentives. It was in that spirit that *Fortune* recently explained that any attack on the tax-deductibility of businessmen's entertainment costs is really an attack on "excellence itself."

These formulations leave gaping holes. For one thing, they all assume that the desire for money is a simple matter, which it isn't. In an affluent society like ours, where most people can afford life's essentials, money is mostly symbolic and relative—and therefore quite elastic—in value. Even among those to whom money is important, there's a tremendous difference between wanting the steady, dependable salary increments that people who work for government and big business receive, and the risky, high-payoff gambles that independent oilmen and other entrepreneurs are after. For one group, a fully-vested pension might be a tremendous incentive to work toward; for the other, it would matter not at all.

Another great problem with all the motivational schemes is that they don't take into sufficient account the tremendous power of simply liking what you do—whether or not it's profitable, whether or not it helps society generally. That's a big part of what drives the wildcatters and actors in the world, and just creating an atmosphere where they can do what they love freely is a tremendous incentive to the production of larger social goods. For all these reasons, we ought to be looking into what it is—in financial, legal, and social terms—that keeps the Jack G. Joneses of the world in action. Why is it, for instance, that independent oilmen are flourishing and independent investment houses, which are of enormous helpful potential, are dying? What can we do to encourage the people who make the country grow and change without simultaneously giving undeserved rewards to people who don't do those things?

Part of the answer is to create an atmosphere where entrepreneurship is more widely appreciated, a more common feature of the dreams of the young and a greater source of pride

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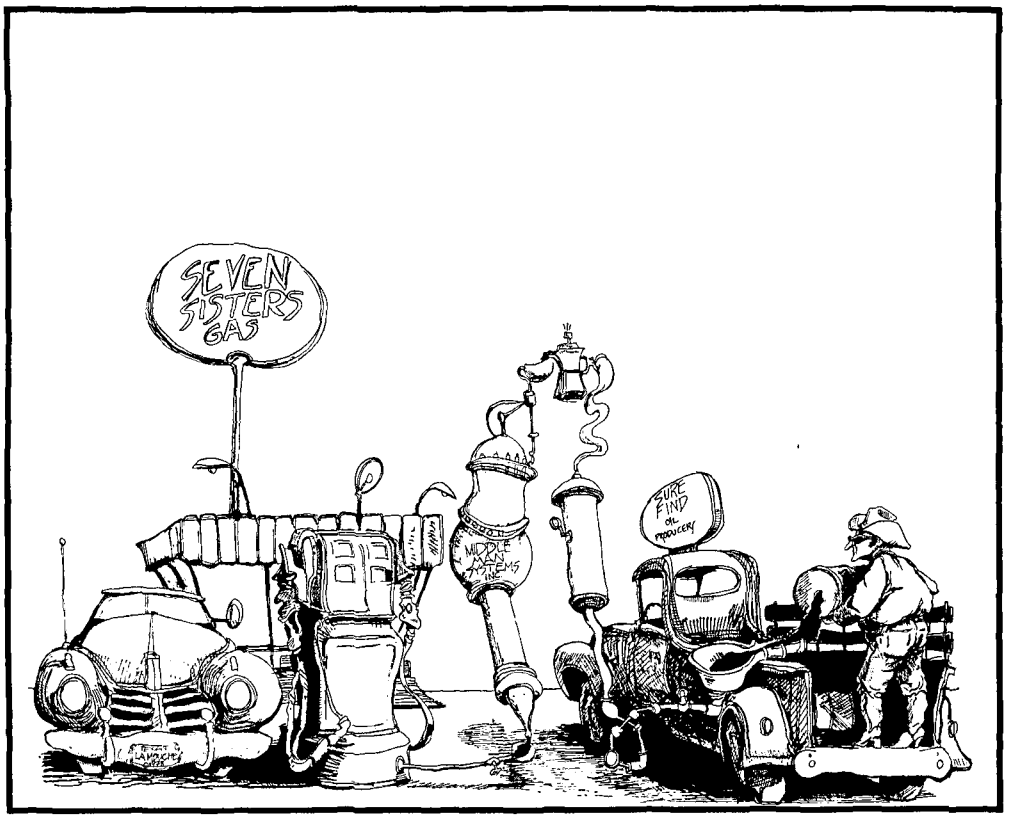

and prestige for the fully grown. That's a difficult program to legislate; it has to go on in schools, at dinner tables, in newspaper columns. But it's also worth looking into actions the government could take, actions that would involve financial rather than emotional incentives.

The main thrust of these ideally would not be giveaways to one special group or another (the oil business was for years the beneficiary of one of the most generous of these, the percentage depletion allowance), but across-the-board incentives to entrepreneurship. The best vehicle for such incentives is the tax system. We might give tremendous capital gains breaks to investors in new enterprises while taking away the breaks for trading in old stock. We might take away the tax deductions for interest on loans to buy consumer goods like washing machines while allowing those deductions for the person who takes out a loan to start a laundromat. We might take away the tax exemption for interest payments on state and local government bonds, which takes capital away from risky enterprises. We might allow investors in new businesses to deduct these business losses from their personal income, a break now available only to investors in partnerships and very small companies. Tax policy has generally lumped together all businesses, old and new, large and small, but it need not.

"You have to have a certain amount of organization in America," says Jack Jones, and he's right. The amount we've got now, in fact, seems more than ample. "For myself," he says, "I don't need it. That's one of the beauties of the oil business—you can get by with a minimum number of people. I hire a few people part time, but mainly I like to do it all myself." Operating this way, Jones can make contributions it's hard to believe in your heart the government or Exxon could make nearly as well. For that reason, there ought to be a way to persuade a lot more of us to do it all by ourselves too. ■

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Memo of the Month

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September 1, 1978

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Getting Tough on Trade

by Robert M. Kaus

Few eyebrows were raised in the last few months when the financial leaders of the free world delivered stern warnings to the United States about its economic policies. If the U.S. wanted monetary stability, they said, we should put our own house in order. It was *our* balance of trade that was billions in the red, and *our* currency that was sinking to new lows on world money markets. At the annual convention of the International Monetary Fund, President Carter asked the assembled leaders to be patient—his own "reputation as a leader" was committed to erasing our shameful trade deficit.

We are so used to foreign accusations against the U.S., and so used to agreeing with them, that these latest criticisms probably had a great deal of credibility. Were they justified? Foreign trade and the U.S. deficit have become big issues in Washington. It is important to examine honestly how we got into our current mess, looking especially at the role played by some of the countries that are so quick to remind us of our duties to the free trade system.

Let's start with Japan—the nation that has profited most from the relative openness of the American market. After World War II, Japan's rebuilding effort was guided by a pervasive fear of a trade deficit. The twin principles of Japanese trade policy during this period were free trade abroad (for Japanese exports), and protectionism at home (to avoid foreign competition). Protectionist devices that the most ardent labor "fair trader" wouldn't dare propose in America today—you name them, the Japanese used them. Their economy was sealed off from foreign investment (although for part of the period Japanese investment in the U.S. was *encouraged* by our tax laws). High tariffs were only the first line of Japan's defense against foreign goods—they were backed up by a comprehensive scheme of import quotas and enforced by a protection-minded government bureaucracy, the Ministry of International Trade (MITI)—or the "Ministry of One-way Trade" as it came to be known in foreign business circles. From 1945 to 1965, the Japanese were the renegades of the free trade world.

In 1955 the United States sponsored Japan's official entry into the free trade brotherhood—a membership in GATT (General Agreement on Tariffs and Trade). Only in the mid-60s, however, did Japan begin to lower the official trade barriers, encouraged by a booming business of exports to other nations' markets. The tariffs began to fall during the Kennedy Round reductions of 1968. But although Japan's balance of trade had turned favorable in 1965, Japan kept its quota system largely intact until the early 70s. It wasn't until late in this decade that Japan dropped quotas specifically designed to combat America's strength as an exporter in high technology items like computers.

Eliminating all these tariffs and quotas was a great thing—unfortunately it didn't necessarily mean that Japan's market (second largest of non-communist nations) was

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open to the world. For the contribution of the Japanese to the science of protectionism wasn't in the field of tariffs and quotas. Those hoary devices are highly visible, and in economic circles, pretty disreputable. The Japanese had discovered a far more potent weapon: bureaucracy. If tariffs are easy to argue against, safety standards are not. And so American manufacturers attempting to unload appliances in Japan would be told—so sorry—but the cords were the wrong size. And the motors, too, were unsuited to Japan's peculiar climatic conditions. American pharmaceutical manufacturers discovered that prohibitive new health regulations just happened to spring up in the very product lines where they had a competitive edge.

Indeed, in Japan the "partnership of government and business" that so many American politicians visualize achieved reality. When a non-Japanese manufacturer sought a safety certification for an inexpensive electrical appliance, his application might be routed down to a lower level bureaucrat in MITI whose other activities included looking after the welfare of the Japanese appliance industry. "Because the approval authority is not independent of the ministry concerned," note James Abegglen and Thomas Hout in the current issue of *Foreign Affairs*, "there is substantial room for mistrust and misunderstanding." In other words, it's not rare that the bureaucrat would delay the certification of an import long enough to let the Japanese manufacturers come out with a competing model. Similarly, importers might find that their customers quietly had been given "administrative guidance" to "buy Japanese."

Today, even skeptical U.S. observers believe that many top officers in the Japanese government sincerely want to remove these bureaucratic obstacles. The problem these officials face is getting this message accepted in the ranks of protection-minded lower level bureaucrats and in the more industry-oriented ministries. "Those guys are very insulated, closely tied to the interests they regulate and there is not much improvement," noted one American expert. "It is going to be an extraordinarily slow process." When U.S. manufacturers last year achieved a breakthrough in the production of phosphate fertilizers, MITI responded with an unwritten and unpublished series of administrative "requests" to local consumers that limited U.S. imports dramatically.

Or consider the recent experience of one American entrepreneur, T.R. Cataldo of Micro-Lert Systems International. Cataldo has invented an electric device—a reverse "beeper"—that can be worn around the neck of those who, like epileptics or likely heart attack victims, may need emergency medical assistance. When help is needed, the wearer simply squeezes the device, and it sends out a signal calling a pre-arranged group of doctors or relatives. Cataldo's brainchild has tremendous potential for saving lives and eliminating the need for expensive institutional care. Late last year, on a trip to Japan, Cataldo decided to talk with the Japanese Ministry of Post and Telecommunications about marketing his product. Very interesting, a succession of ministers told him—

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there was nothing like it in Japan. But approval, unfortunately, would be difficult. Had Mr. Cataldo thought of manufacturing his device in Japan? It would be so much easier to get the product approved if it was licensed to a Japanese producer.

Cataldo had come face-to-face with the so-called "public policy" sector of Japanese industry—a government-run series of utilities and enterprises where "buy Japanese" is an explicit credo rather than a clandestine bureaucratic campaign. The frank public statements to this effect by the head of Japan's telecommunication industry have been a considerable embarrassment to the Fukuda government's attempt to convey a "free trade" image.

It would be unfair, of course, to give the Japanese all the credit for perfecting the bureaucratic hassle as a way to preach free trade but practice protectionism. Most European nations have fostered the art as well. France is notorious for its ingenious restrictions on the import of pharmaceuticals. In Italy, tariff barriers to popular U.S. imports of corduroy and denim aren't insurmountable, but there is a little paperwork needed. The importer must prepare nine copies of an import authorization form and complete (in triplicate) a technical certificate giving the material's fiber and dye content, weight, and so on. These forms then go to an imports office in Rome. After approval there, they go to the Ministry of Finance. After approval there. . . .

Our Barriers Are Visible

Nevertheless, you are thinking, the United States blocks some imports too. You are right. But consider the following:

- The barriers to foreign trade in the U.S. in the postwar era largely took the form of tariffs or negotiated import restraints. So-called "non-tariff barriers"—subsidies for exports, restrictive safety standards, import licenses, burdensome paperwork requirements—are generally conceded to have been much greater in other nations. The 1968-73 Kennedy Round of GATT negotiations successfully lowered tariff barriers dramatically—but it deferred action on most non-tariff barriers. The result was arguably to benefit the trade surpluses of those nations who relied on the invisible bureaucratic methods of protectionism.
- The U.S., Japan, and the European Common Market (EEC) all protect their agricultural sectors, to some degree, from foreign competition. Section 22 of the Agriculture Act of 1923, for example, broadly allows the U.S. to limit imports which "interfere" with programs of the Department of Agriculture. Needless to say, there are plenty of those programs, and the provision has been invoked to protect several U.S. industries—notably dairy and sugar. But the protectionist shields of Japan and the EEC are far less selective, and have a greater restrictive impact on trade than our law. Nevertheless, in both Europe and Japan, the U.S. is repeatedly told that the political clout of local farmers makes broad agricultural liberalization "non-negotiable."
- Like other countries, the U.S. has a "buy domestic" policy of government procurement. But there's a key difference. The American policy is explicit, written in a statute, and the preferential margin is fixed by law. Foreign suppliers are notified of all bids and specifications. The winning bid is published. The advantage accorded any American firm may be readily discovered. In contrast, the discriminatory policies of other countries (again, including the Common Market and Japan) don't incorporate this "due process." Often, U.S. firms aren't told when bids are taken or specifications change. The impact of this *sub rosa* discrimination is much more difficult to measure than our above-board policy.
- In the three decades after World War II, the U.S. generally kept its markets open to Japanese products. European nations, in contrast, were

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quick to abandon free trade principles and erect barriers against Japanese competition. As a result, goods that Japan could have sold in Europe have been diverted to this country. In 1972, Japan claimed only 3.6 per cent of total European imports, but 16.3 per cent of goods imported to the U.S.

How did all this come to pass? Free-traders in the United States, particularly those involved in ongoing negotiations, portray the situation as a complex one in which each nation has its own dirty hands, and in which the common interest of all is served by a carefully orchestrated, mutual lowering of barriers. Confrontation is to be avoided; above all, no nation should blame any other nation for having played the balance of trade game to its advantage. The whole process is somewhat like a California sensitivity session during the mellow 60s—interdependent, "nonconfrontational," "nonjudgmental."

The big picture this view misses is the distorting role of anti-communism in U.S. trade policy after World War II. In 1945 America saw its primary mission in the Far East as the reconstruction of Japan as a stable and prosperous ally. The main goal of our relationship was not a favorable balance of trade with Japan, but a mutual security treaty. It seems crazy now, but in 1962, when the Japanese resurgence was essentially complete, President Kennedy still gave as a central objective of our free trade policy "the need for new markets for Japan and the developing countries." These strategic, rather than economic, objectives dominated our European policy as well. As a rich strong nation, we could afford to look the other way if other nations chiseled a bit behind the rhetoric of free trade—if it helped their economies, so much the better. We adopted a lofty, principled view of international commerce—and even if others didn't play the game by the rules, by golly we would.

This lofty view began to be increasingly unrealistic about 15 years ago, as America's economic dominance waned, and multinational corporations spread advanced industrial techniques around the world. But our complacency was reinforced by a more sophisticated moralism among economists. Many postwar economists just couldn't understand why other countries would want to play the protectionist game. After all, economic theory proved that by denying itself the benefit of cheap foreign goods, a nation which erected trade barriers would only hurt its own interests—even if its trading partners refrained from retaliation. The theory assumed of course that all nations start from a position of full employment—but postwar economists were confident that this could be achieved by the new, sophisticated techniques of deficit spending and monetary control. Looking back on thirty years of chronic unemployment, it's harder to scoff at the foreign politicians who, heedless of economic theory, tried to protect local jobs by keeping exports high and imports low.

In 1973, with the floating of international exchange rates, economic strategists came up with new reasons to discount the impact of foreign protectionism. Any nation that tried to block our imports, it was theorized, would quickly pay the

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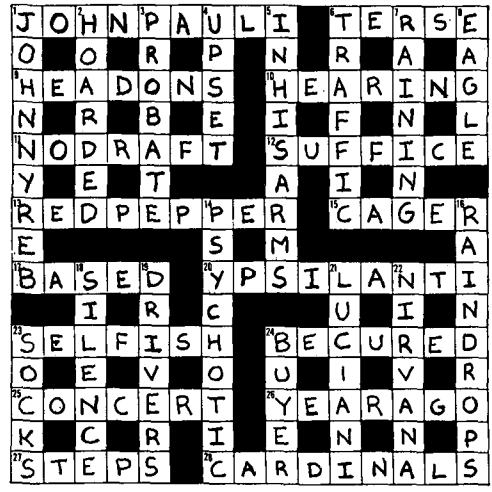
Answers to last month's puzzle:



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price—as its trade surplus grew, its currency would appreciate and our exports would become cheaper and more competitive. We could stick to our principles and wait for this monetary retribution—or maybe even hasten it by "talking down the dollar," as Treasury Secretary Blumenthal did last year. But in the real world, foreign trade barriers, rather than falling before the threat of dollar devaluation, played a role in frustrating Blumenthal's strategy. If other governments are determined to keep us out of their markets, we won't increase sales no matter how big the bargains we offer. The dollar has been falling for a year and a half; its decline has yet to dramatically boost U.S. exports—and this failure has only sent the dollar down further.

Rednecks

We are now paying the price, in our massive deficits, for our high-minded view of free trade. The first step towards improving the situation is what it has always been—to realize that the battle for world trade is a grubby fight for goods and jobs, not a spiritual struggle to maintain free trade purity, and that, after sacrificing economic advantage in the name of anti-communism, we have entered the fight late. In short, we should know when we're being screwed and not be afraid to screw back in order to stop it.

Yet the lofty view persists. While researching this article, I called up one former State Department official, and asked him if he agreed that the U.S. had allowed itself to get the short end of the stick in trade negotiations. He termed the suggestion "protectionist," and added "you can get a lot of rednecks to say that, but you can't get anybody *responsible* to say it."

He is more or less right. The near-universal attitude among the international trade intelligentsia is that any attempt to dramatize the ways in which American exports are unfairly blocked is an attempt to promote a narrow-minded protectionism generally associated with the AFL-CIO. Responsible people may know when they're being had, but they would never be seen angry in public, lest they be mistaken for rednecks or disciples of George Meany. To date, the favorite negotiating tactic of the Carter administration and Special Trade Representative Robert Strauss is to achieve freer trade by using the specter of rabid American protectionism as a club with which to threaten the leaders of foreign nations. "Give us equal access to your markets," Strauss implies, "or we won't be able to hold off the crazies in Congress who want to block all imports." American senators traveling to Japan are encouraged to exaggerate the protectionist threat, and every foreign concession is welcomed with a carefully staged sigh of relief—"Let's hope that keeps Congress happy for a while."

What's missing from this scenario is any attempt to generate popular support for the view that free trade is good, but that it's about time that American businessmen received the same treatment in other nations that foreign businessmen generally get over here. Instead, Strauss' office fears that any public outpouring of dissatisfaction will play into the hands of those who don't want free trade at all. In doing so, the administration has deprived itself of one of its most powerful bargaining weapons—the power of public opinion.

The problem was illustrated during the recent trip of a U.S. trade aide to Japan. Strauss wanted to present a set of demands to the Japanese government, but he did not want to provoke a confrontation. So, it was decided to send a low-level official, and General Counsel Richard Rivers got the nod. His conservative personal style was expected to contribute to the non-confrontational air of the meetings.

But Strauss' advisers had miscalculated the Japanese awareness of trade politics. Rivers' demands leaked to the Tokyo press before his arrival, and this, coupled with negotiations in Washington and the American announcement of planned troop

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withdrawals from East Asia, turned the low-level mission into a "sensational media event." Rivers' calm presentations were portrayed as aggressive and demanding. By the time he met with Prime Minister Fukuda, the Japanese head of state could introduce him, only half-jokingly, as "the most famous man in Japan."

The point of this incident is not that Strauss' office bungled the mission, but that trade policy is a matter of intense public debate in Japan. The force of the resulting public opinion is one source of Japanese strength in trade negotiations—one reason that they can label some concessions "non-negotiable." The debate has hardly started over here—how many Americans have heard of the Japanese counterpart of Richard Rivers? And the administration is doing little to stir up public sentiment in support of its policies—preferring to whisper its views to foreign leaders. But a little public righteousness—against foreign barriers to our trade, rather than against "cheap imports"—might be a powerful weapon at the GATT talks.

While we have been petrified by the possibility of a public confrontation with other nations, we haven't been able to use effectively our greatest weapon for breaking down barriers abroad: denial of the vast American market. At any point over the last two decades the aggressive use of this threat might have been extremely effective in bringing down both hidden and visible barriers to our exports. But as long as retaliation is only something that protectionists recommend, the threat isn't very credible.

Effective retaliation need not be heavy-handed. For example, Underwriter's Laboratories, the private American concern that certifies the safety of electrical appliances, has an army of inspectors in Japan, efficiently approving Japanese goods for American export in the comfort of Japanese factories. Japanese safety inspectors, on the other hand, don't make house calls; U.S. manufacturers must still go through the costly process of hiring Japanese agents and sending prototype models to Japan for testing. It wouldn't be difficult for the American government to impose similarly cumbersome requirements on Japanese goods until they gave us the same courtesies we now give them.

These alternatives will be unavailable to any administration as long as it concedes the "hard line" in trade matters to the protectionists. What would be the effect if Robert Strauss stood up and said, "if you don't give us fair treatment, not only will the Congress recommend retaliation—damn it, *I'm* going to recommend retaliation." How much better would things be now if something like that had been done 15 years ago?

American government policies don't deserve all the blame for our trade decline. Our businessmen had their own lofty view. All too often they preferred to accommodate foreign trade barriers by building plants abroad rather than engaging in the messy task of beating down the barriers from the outside, or hustling American-made goods in spite of those obstacles. Still, it's the government's job to channel the energies of American business in directions consistent with the national welfare. If multinational companies don't care where they make their money, the Departments of State and Treasury should.

Free trade remains a desirable goal—the economists are right when they say it allows international specialization that in the long run will benefit all nations. It is not, however, a self-enforcing mechanism, and we can't afford to sit back and congratulate ourselves on our economic wisdom while our trading partners profitably beat the system. That's how we got into the current mess. To start undoing the damage, we should admit—honestly and publicly—that we can no longer play the free trade game all alone. If free trade is to work, we must be willing to use our economic muscle to ensure that our openness to foreign competition is reciprocated. ■

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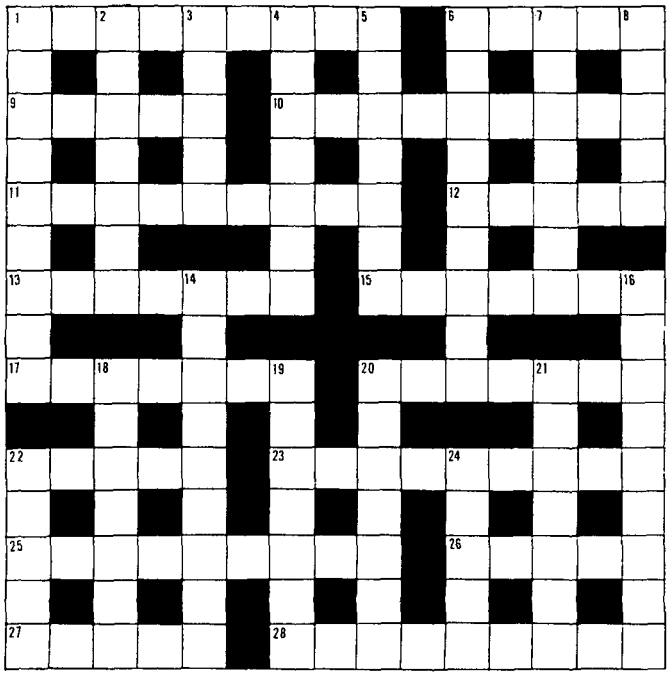
the political puzzle

by John Barclay



ACROSS

1. Humorously banal statue in September news? (4, 5)
6. Desert in Wisconsin airplane. (5)
9. Ed ran out backwards to become Washington figure. (5)
10. The ultimate in involuntary togetherness. (5, 4)
11. Wild ploys in ease for neophyte skier. (4, 5)
12. Tennis player always first to the top. (5)
13. Pursuant to penultimate commandment? (7)
15. Soft wit made to measure lemon peel. (5, 2)
17. Derives somewhat different answer. (7)
20. Attack unprofessional preposition? (3, 4)
22. He could become French queen. (5)
23. It is outstanding to make up former cubicle before 10:00 assembly. (9)
25. Borrow feather to register points? (9)
26. Old-fashioned apses constructed. (5)
27. Escapee in the end, perhaps, from 1 Across. (5)
28. Ark we form from 1 Across twice. (9)

DOWN

1. Studied with a little party inside and found guilty. (9)
2. Domains which produce leader. (7)
3. Tries to exist in radar establishment. (5)
4. 104 back on top of conservative makes a conquest. (7)
5. After 7 Down and the best. (7)
6. Muffled tiny cries for openness. (7)
7. The next are in the nest. (7)
8. Metal bar produced in smelting other rocks. (5)
14. Pair of hose are in a way symbol of luck. (9)
16. Fork tends to come together at hotel reception. (5, 4)
18. Let nut rave about California locale. (7)
19. True in seven offices. (4, 3)
20. Manufactured in a coal town in New Hampshire. (7)
21. Denotes obscure requirement of another person. (5, 2)
22. Poets somehow hinder others. (5)
24. Confused pleas may be a mistake. (5)

The numbers indicate the number of letters and words, e.g., (2,3) means a two-letter word followed by a three-letter word. Groups of letters, e.g., USA, are treated as one word.
Answers to last month's puzzle are on page 25.

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The Economics of Extortion

by James North

When Federal Reserve Board Chairman G. William Miller went before the Senate Banking Committee for his confirmation hearings last February, people wondered about his credentials. He had no background in government or monetary policy. Unlike his predecessor, Arthur Burns, he was not a distinguished scholar. He had been president of a huge corporation, Textron, and his ties throughout the corporate world might have been regarded as a liability, since he would be charged with making decisions affecting every American business. The committee was expected to give Miller a thorough going-over.

The committee did exactly that, but the grilling did not consist of questions about Miller's background or his qualifications for the job. Instead, the senators chose to question Miller about a $2.9-million payment Textron made to a sales representative in Iran that eventually went to an Iranian general. The money was paid by Textron's subsidiary, Bell Helicopter, to help get an arms deal with the Iranian government. Members of the committee were clearly upset by the revelation—even though they had no evidence that Miller knew what the payment was for—and no one seemed more incensed than chairman William Proxmire. Proxmire berated Miller for the better part of a morning hearing session, finally demanding Miller's withdrawal. Despite the lack of persuasive evidence implicating Miller in the so-called bribe, which wasn't illegal to begin with, Proxmire argued that public suspicion would impair Miller's effectiveness as Federal Reserve chairman. Miller, of course, declined the invitation to step aside and eventually was confirmed by the full Senate.

But his experience before the Banking Committee was nothing new for corporate executives in the last few years. Ever since the Lockheed scandal first made headlines, corporate bribery abroad has been an issue—and a big one—for Congress, for two successive administrations, and for a host of federal agencies, led by the Justice Department and the Securities and Exchange Commission. In that time, dozens of corporate executives have trundled up to Capitol Hill—primarily before committees chaired by Senators Proxmire or Frank Church—and have admitted to paying large sums to brokers or politicians or officials overseas in an effort to compete successfully for lucrative contracts. During the height of the furor two years ago, when new disclosures of "improper" payments abroad seemed to be breaking daily, over 100 corporations reported to the SEC that they had made some sort of questionable payments to foreign officials. The tone of the Proxmire and Church hearings was one of shock, or indignation, of moral outrage (Senator Dick Clark: "Do you think the management of your company was wrong for having done that. . . ?") And out of them came the Foreign Corrupt Practices Act, passed last year, outlawing all but the smallest of bribes.

For most Americans, the visceral reaction to the new law was one of approval; it seemed like the right solution to a serious problem. Bribery is plainly wrong. We outlaw it because we live in a society that believes choices

James North is a Washington writer.

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should be made on merits, not on who can provide the largest kickback or bribe. It's fine, and proper, to outlaw bribery where we can make the rules apply to all the players, as we can in this country. But overseas that is clearly not the case—we don't control the game, and we can't control the players.

By thinking of corporate bribery abroad as a purely moral issue, which is how most of us think of it (and certainly how most of the Senate thought when they voted 86-0 to pass one version of the anti-bribery law), we have saddled ourselves with a particularly self-defeating application of the post-Watergate morality. At the time there was a widespread feeling that corporate bribery was just one more example of the venality of the multinationals, and the fevered rhetoric stimulated by the revelations was inflamed by a presumption that American corporations were exporting their own brand of shabby morals.

There was some of that, and no one can in good conscience condone or tolerate it—the most obvious case being ITT's attempt to undermine the Chilean government primarily through bribes and illegal political payments. But to mentally link all cases of corporate bribery with ITT is a mistake in scale and, more importantly, in intent. Most of the examples of corporate bribes uncovered by newspapers and the SEC were not like that at all—in fact, many of them weren't even bribes. They were payments made at the demand of foreign officials or agents, with the understanding that they were necessary to get a contract with the government. That is called extortion, not bribery, and the difference is not insignificant. Rather than being the criminals, many corporations were actually the victims of a system over which they had no control. They had been making these payments for years, as a matter of necessity, all the time. It was an important part of doing business in many countries, a business expense that was not paid gleefully or with any sense of satisfaction, but one that was paid nevertheless.

Americans Not Alone

This is a time when our economy is in trouble—inflation is rising steadily and the dollar is sinking almost daily. One of the obvious answers, every economist agrees, is to do everything possible to close our massive (approaching $33-billion) trade deficit. That is why forbidding U.S. companies to make payoffs overseas is such an insane policy. It is estimated that $10 billion in exports is being lost every year because of a variety of government measures, and leading that list is the ban on payoffs. It is not as if American companies were alone in making payoffs. Our trade competitors do it too, and the fact is, payoffs American companies don't make, foreign companies will. The football equivalent would be to make holding illegal for our team but not for any of our opponents.

By keeping American companies out of markets where bribes are a part of doing business, we are only hurting ourselves.

This is something the business community understands, even if no one else is listening. During the congressional hearings, business leaders complained that if American

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Sen. James Abourezk,
Bella Abzug, Julian Bond, Norman Cousins,
Clay Felker, Milos Forman, Joseph Heller,
Cong. Elizabeth Holtzman, Vernon Jordan,
Jerzy Kozinski, J. Anthony Lukas,
Sen. George McGovern, Joseph Papp,
Sen. William Proxmire, Gail Sheehy,
Tom Wicker **read it.**

Cesar Chavez, Ramsey Clark, Fred Cook,
Harold Clurman, E.L. Doctorow,
Jules Feiffer, Frances FitzGerald,
John Kenneth Galbraith, Ralph Nader,
Marcel Ophuls, Octavio Paz, Nora Sayre,
I.F. Stone, Studs Terkel,
Kurt Vonnegut, Jr. **write it.**

Victor Navasky **edits it.**

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companies weren't willing to meet the payment demands, there were plenty of foreign companies that were. One foreign official told *The Wall Street Journal:* "If the Americans don't do it, somebody else will—the French or the Germans."

Yet we were so busy accusing American corporations of immorality no one seemed to care. It didn't matter that our trade deficit was growing worse by the day and that we ought to be finding ways to make it easier, not harder, to export American goods—the Foreign Corrupt Practices Act passed in a landslide. We were more interested in exporting morality than in exporting American products, a futile gesture since it won't bring about the kind of reform we would like but will instead give business to our trading competitors. We should be outraged at the extortion, but we also should admit there is not much we can do about it. By keeping American companies out of markets where bribes are a part of doing business, we are only hurting ourselves.

How the System Works

In most countries in South America, Asia, and Africa, one can hardly operate a business without paying off someone. That is how the system works in most of the world. Payoffs go on at both high and low levels in the bureaucracy. Minor civil servants, for example, generally have petty but potentially destructive authority over all sorts of business activities, and they use it to extract tribute from businessmen. A firm that wants to obtain an operating license, to get a shipment of goods unloaded, to lower an arbitrary tax assessment, or simply to cut through the government's layers of red tape will often be denied until it greases the palm of a bureaucrat.

Nor is all of it so petty. Getting an audience with a head of state to make a company's case can cost a lot of money. So can political "protection," another form of foreign extortion. Gulf Oil, for example, gave $3 million to the ruling political party in South Korea in 1970 after the party chief told Gulf chairman Bob Dorsey that the company's "continued prosperity depended on our coming up with a $10-million contribution to the party." A special committee made up of several directors of Gulf and chaired by John J. McCloy concluded that neither the $3-million payment nor an additional $1-million donation in 1966 "was in any sense initiated by Gulf or treated by Gulf as anything other than a distasteful effort on the part of the government or the party to obtain a contribution which Gulf had no desire to make."

In another case, United Brands was threatened in Honduras with a doubling of the taxes on its bananas—an amount that would have cost the firm $20 million, almost as much as its previous year's net income. United Brand's head Eli Black offered the president of Honduras several hundred thousand dollars to reduce the tax. After the president's initial refusal, the Economics Minister approached the company and said he would cut the tax in exchange for a payment of $5 million. When the SEC began investigating the payment, Black leaped from a 44th floor window to his death.

During the Church and Proxmire hearings, the evidence that the "bribes" were solicited by foreign officials was overwhelming. A typical example, taken from the Proxmire subcommittee hearings, was the case of a Texas company called Translinear. The company had signed an agreement for a 99-year land lease in Haiti and was planning to build a complex of hotels and entertainment facilities. After construction had started Translinear was approached by local officials who wanted a $500,000 payoff. Without the money, they implied, so much red tape would be put in their way that the construction would never be completed. The company declined to pay the money and was told to leave Haiti. Total estimated loss to Translinear: $3 million.

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Delicious Ambiguity

In business circles there is widespread concern about the new anti-bribery law. Businessmen naturally worry about how the new law will be enforced, particularly since its prescribed penalties are unusually severe: fines up to $1 million for corporations, up to five years in jail and $10,000 fines for corporate officials. But the SEC, which more than any other agency made a scandal out of corporate payoffs, now refuses to answer business questions about how the new law will be applied to various situations, dismissing such legitimate inquiries as "asking us how to get around the law." One corporate chairman complains, "One of the good things in favor of laws is that they tell us what is right and what is wrong." The SEC, however, feels that corporations should be kept in the dark about the new law's meaning, going so far as to praise its "delicious ambiguity." Says former SEC chairman Roderick Hills in defense of this ambiguity, "It keeps people on their toes."

Such attitudes have been characteristic of the SEC and the Justice Department since they first began their investigation of overseas payments. From the start, SEC officials made it clear that they disapproved of such "bribes," and that they intended to stamp them out by any means available. But when the corporate payoffs were being disclosed, there was no American law forbidding them (the Foreign Corrupt Practices Act didn't become law until December, 1977). That did not stop the SEC or the Justice Department, who stretched every available statute to crack down on payoffs. One law, for example, prohibits taking more than $5,000 in undeclared cash out of the country; another requires firms receiving assistance from the Export-Import Bank to swear that they have not bribed anyone with its funds.

The Justice Department even used the threat of mail and wire fraud statutes, laws that have been used in the past to convict politicians on the grounds that they have deprived constituents of honest representation. The statutes have been applied to corporate bribery under the flimsy theory that such bribes deprive foreign citizens of their right to honest service from their government representatives. This sort of strained interpretation of federal laws to prosecute actions offensive to the Justice Department is what one Justice official had in mind when he said the list of possible laws to be used against such corporations "is limited only by the ingenuity of the prosecutor." But it's worth noting that the wire fraud prosecutions have yet to bring a conviction: the Justice Department so far has used them only to bully and harass firms that have made overseas payments.

Even in areas where the anti-bribery bill made exceptions, in the so-called "grease" payments to low-level bureaucrats that are still allowed, Justice officials have made it clear they don't intend to allow this exemption to stand. They will use whatever statutes are available to prosecute corporations that make such payments, and do not feel constrained, in the words of one official, "by the intent of Congress."

Pulling Out of Markets

The fear that the new law and the further threats from the SEC and Justice will handicap American corporations trying to compete with foreign companies extends to the Commerce and State Departments. Frank A. Weil, assistant secretary at Commerce, has acknowledged that many businesses are pulling out of export markets—markets we badly need—because of the new law. "The questionable payments problem," he said, "may turn out to be one of the most serious impediments to doing business in the rest of the world." Most corporate officers prefer silence to the possibility of arousing the ire of the Justice Department, but others have spoken out. "Few of these customer

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We know now that our economy is not strong enough that we can afford to keep cutting off our nose to spite our face in international trade.

nations feel that the American way is 'the only right way' or that they must follow our rules in their countries," Ingersoll Rand chairman William Wearly recently told his stockholders. "Meanwhile our European and Eastern competitors are laughing all the way to the bank at our nation's arrogant attempt to dictate U.S. standards to customers abroad."

The congressional committees chose to ignore the practical realities of payoffs in their misguided effort to make the world a better place. Did Proxmire really believe it when he said: "The recent revelations of foreign bribes . . . threaten to undermine public confidence in our free enterprise system. If we permit bribery to become a regular policy of United States corporations doing overseas business, it will only be a matter of time before our domestic economic system will be affected."

On the issue of our economy being damaged if payoffs were banned, there was this, from one of those who favored the bill: "For a limited time span some American companies might lose certain business opportunities, but that is an expense we should be able to tolerate for the good health of our political and economic system." Or this, from Leonard Meeker of the Center for Law and Social Policy: "Corrupt practices by U.S. enterprise abroad reflect on the United States as a nation." Or this, from Rep. Steven Solarz: "Leaving aside the question of whether bribery is necessary to win contracts . . . there is much more involved than a few dollars. . . ." These pious pronouncements helped get the bill passed, but they didn't do much to face squarely the harder question of what American companies should be doing to promote exports in a world where bribery is a fact of life.

We know now, and should have know then, that Solarz and the others are wrong—our economy is *not* strong enough that we can afford to keep cutting off our nose to spite our face in international trade. If the U.S. government wants to discourage corporate payments it should be looking for ways to stop them with the cooperation and agreement of other nations. Unilaterally banning American payoffs is a lot like unilateral disarmament. Nuclear weapons, we would agree, are morally offensive, and the world would be better off without them, but we are not about to disarm ourselves if other countries refuse to do the same.

Why, then, are we so willing to disarm ourselves when it comes to trade? Corporate payoffs are an important weapon in trade—morally repugnant, surely, but important nevertheless. They are common and necessary in foreign markets we ought to be in, that we need to be in with the economy in such sad shape. We should frown on the practice, do everything we can to persuade the world community that bribery and extortion have no place in world trade. But what we should not be doing is unilaterally disarming American corporations at a time when we have to increase exports. The United States cannot stop international bribery single-handedly. By trying to do so, we are only wounding ourselves. ■

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Tidbits and Outrages

Continuing Education

House staffers recently flocked to attend a series of seminars given by an organization called the Congressional Management Foundation. The subject was "grantsmanship." If you assume it was designed to help these dedicated congressional employees find out how to get needed grants for their districts, you are wrong. The seminars dealt with how to *announce* grants, including such important substantive material as how to get out your press release before the senators in your state get theirs out.

The Curse of Bigness, Chapter XVIII

In August the House and Senate Small Business Committees released a report from the Office of Management and Budget that showed only 3.5 per cent of government research contracts went to small business. The same report noted that over a 20-year period (1953-73) "firms with less than 1,000 employees accounted for about one half of major U.S. innovations."

Who says they don't make house calls?

This classified ad appeared in *The Washington Post* during September:

"LOBOTOMIST—On call positions. Experienced blood drawers only. Need people who can work all day during week. Own transportation a necessity. Call Elecia Miller aft. 1, 770-0244 EOE."

A Tough Job

A few months ago, Rep. Bill Armstrong (D-Colo.) offered an amendment providing that each member of Congress would no longer distribute 2,000 free calendars to their constituents. The amendment was defeated. Rep. John Murtha (D-Pa.) explained: "Distributing these calendars is the most important thing I do."

Actually, we look at the cuffs first...

The State Department deemed the following message of sufficient importance to justify cabling it to all our diplomatic posts:

"FM SECSTATE WASHDC, TO ALL DIPLOMATIC AND CONSULAR POSTS... PER CHANNEL... INFORM CONSUS... E.O. 11652 N/A... SUBJECT: APPROPRIATE DRESS:

"FOLLOWING IS THE TEXT OF DEPARTMENT NOTICE ON APPROPRIATE DRESS... The Department has no prescribed dress requirements for employes. Instructions for preparation of Foreign Service efficiency reports forbid comments on personal or physical qualities that do not affect performance or potential. Employes are expected to dress neatly and comfortably. No rigid criteria are suggested. Employes should exercise common sense and good judgement in determining when representation requirements of the department suggest that more formal attire should be worn, and when alternative attire might be appropriate."

But perhaps clothing is more important than we had realized. After all, *U.S. News and World Report* devoted two full pages to an interview with one John T. Molloy, described as "a consultant who has devoted his career to studying the role of apparel in business success." If you've been worried about what to wear, here is Mr. Molloy's advice:

"The first [point] is that what you wear immediately establishes your authority, credibility and likability. The darker, more traditional the clothing, the more authority it transmits. So if you want to convey an image of power and prestige, your main garments should be dark blue or dark gray, and always of top quality. You should buy the best clothing you can afford: a rich-looking suit for men, the same for a businesswoman—or a rich-looking dress if she chooses not to wear a suit.

"Two: There should be high contrast between the color of one's suit and the shirt or blouse. For a man, that means a white shirt with a navy suit. A woman, particularly, needs contrast to have authority. She might want a bright scarf along with a white blouse."

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Who's Who in the Carter Administration

Last month we told you about **Greg Schneider**'s return to power. As **Gerald Rafshoon**'s deputy, he is back in the saddle again. But White House insiders say that, while he's bright and likable, his judgment is no better than it was at the time of his fall in December 1976... Last February we gave you an interim briefing on **Harold Brown**'s reorganization of the Defense Department. It looked phony then, and it looks even phonier now that it has been subjected to a study by the General Accounting Office. Brown's plan called for a substantial transfer of operations from Washington to the field and a reduction of over 2,000 jobs. What happened? No employees moved to the field, and only 60 left the payroll.... The feeling is mutual department: **Robert Strauss** wants out of his job as the administration's chief inflation fighter and the White House wants him out—of that role. The White House would like to keep him around though, because he is the one person with the ability to talk to figures in the political and economic establishment whom the Hamilton Jordans either don't know or aren't comfortable with.... "Who's Who" is compiling an unenviable record of unreliability about **James MacIntyre**. First we said he would not be appointed director of OMB; then that he would name a mediocrity as his deputy. We were wrong on both counts....

WHITE HOUSE

Deputy Director, Office of Management and Budget—John P. White was assistant secretary of Defense for manpower. The post has been vacant since former deputy director James McIntyre succeeded Bert Lance as OMB director. White was previously senior vice president of the Rand Corp.

Assistant Director, Office of Management and Budget—Van Ooms, chief economist for the Senate Budget Committee, will act as chief economist for the agency. The post has been vacant since the beginning of the Carter administration.

AGRICULTURE

Deputy Assistant Secretary for Conservation, Research, and Education—David G. Ungar was executive vice president of the National Association of Conservation Districts.

Director, Human Nutrition Center—Mark Hegsted, a professor of nutrition at Harvard, will head this new agency.

Associate Director, Office of Governmental and Public Affairs—Edwin Goodpastor was deputy bureau chief of *Time* magazine's Washington bureau.

COMMERCE

Deputy Secretary for East-West Trade—Kempton B. Jenkins is a career foreign service officer and was most recently deputy assistant secretary of State for congressional liaison.

ENERGY

Deputy Inspector General—Thomas S. Williamson was an associate in the Washington law firm of Covington and Burling.

HEW

Assistant Secretary for Management and Budget—Frederick M. Bohen was

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executive secretary to Secretary Joseph Califano. He replaces Robert Derzon.

Director, Health Care Financing Administration—Leonard D. Schaeffer was assistant secretary of HEW for management and budget.

Director, National Institute for Occupational Safety and Health—Anthony Robbins was director of the Colorado Department of Health.

Assistant Surgeon General—Lionel H. deMontigny was director of the Indian Community Development section of HEW's Indian Health Service.

INTERIOR

Director, Bureau of Mines—Roger Markle was president of the western division of the Valley Camp Coal Co.

STATE

Assistant Secretary for Oceans and International Environmental and Scientific Affairs—Thomas R. Pickering has been ambassador to Jordan since 1972.

Alternate United Nations Representative for Special Political Affairs—Richard W. Petree was Minister-Counselor for Political and Security affairs at the United Nations. (probable)

Ambassador to the Somali Democratic Republic—Donald K. Petterson was deputy assistant secretary for African affairs. (probable)

Ambassador to the Central African Empire—Goodwin Cooke was deputy chief of mission in Ivory Coast. (probable)

Ambassador to Lebanon—John Gunther Dean was ambassador to Denmark.

TREASURY

Deputy Assistant Secretary for State and Local Finance—Donald H. Haider was a professor at Northwestern University.

Deputy Assistant Secretary for Tax Policy—Daniel I. Halperin was the department's tax legislation counsel.

AGENCIES AND COMMISSIONS

Civil Aeronautics Board

Member—Marvin S. Cohen is an attorney in Tucson, Arizona. (probable)

Corporation for Public Broadcasting

Member—Geoffrey Cowan is a lecturer at the UCLA Communications Department. (probable)

Member—Paul S. Friedlander is an attorney from Seattle. (probable)

Member—Kathleen Nolan is president of the Screen Actors Guild in Los Angeles. (probable)

Equal Employment Opportunities Commission

Member—J. Clay Smith, associate general counsel with the Federal Communications Commission, was a law professor at Harvard and director of the National Conference of Black Lawyers.

Member—Armando Rodriguez, former president of East Los Angeles College, is the only Hispanic on the five-member board.

Federal Communications Commission

Commissioner—Anne P. Jones, general counsel of the Federal Home Loan Bank Board, had headed the Securities and Exchange Commission's division of investment management previously. She is an ally of FCC chairman Charles Ferris and is expected to shift the balance of power at the agency to him.

Federal Highway Administration

Deputy Administrator—John S. Hassell Jr. was an associate administrator at the agency. Before coming to Washington in 1977, he had worked for the Georgia Department of Transportation.

Federal Mine Safety and Health Review Commission

Member—Richard Backley was administrative law judge with the Civil Aeronautics Board.

Federal Trade Commission

Deputy Executive Director—Barry J. Kefauver has been with the agency since 1969, most recently as director of personnel.

Food and Drug Administration

Deputy Director, Bureau of Medical Devices—Victor Zafra was chief of the health branch of the Office of Management and Budget.

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Law Enforcement Assistance Administration

Deputy Administrator—Homer Broome Jr. is a commanding officer with the Los Angeles Police Department (probable).

Deputy Administrator for Policy Development—Henry S. Dogin is deputy commissioner of the New York State Division of Criminal Justice Services (probable).

U.S. Parole Commission

Commissioner—Richard T. Mulcrone was chairman of the Minnesota Corrections Board.

U.S. Railway Association

Chairman—William Smith has been acting chairman of the USRA.

RESIGNATIONS, DEATHS, AND WITHDRAWN NOMINATIONS

Arms Control and Disarmament Agency

Director—Paul Warnke has announced he will leave as the administration's chief arms control negotiator in late October.

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Civil Aeronautics Board

Member—G. Joseph Minetti retired after serving beyond the mandatory retirement age.

Consumer Product Safety Commission

Commissioner—Barbara H. Franklin has announced that she will resign in February. Prior to her appointment to the commission, Franklin was a White House assistant specializing in the recruitment of women for top government positions.

HEW

Director, Health Care Financing Administration—Robert Derzon was fired by Secretary Califano for not moving fast enough to consolidate Medicare and Medicaid programs. According to one HCFA official, Derzon wasn't willing to attack the health industry, and particularly hospitals, with the vigor that Califano wanted.

Deputy Director, Health Care Financing Administration—William Fullerton resigned for financial reasons.

HUD

Assistant Secretary for Fair Housing and Equal Opportunity—Chester C. McGuire and his deputy, Herman Wilson, have both resigned their posts after HUD Secretary Patricia Harris criticized the productivity of their division.

State

Representative to the Vatican—David Walters has resigned, citing personal reasons.

Ambassador to the Central African Empire—Anthony C. E. Quainton has resigned.

Transportation

Special Assistant to Secretary Brock Adams—Woodruff M. Price has resigned to become a vice president of Seaboard Coastline Industries Inc.

Treasury

Deputy Assistant Secretary for State and Local Finance—J. Chester Johnson resigned in a dispute over the drafting of the National Development Bank Bill.

Federal Home Loan Bank Board

Member—Garth Marston is leaving to become vice chairman of the Provident Institution for Savings in Boston.

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The Conflict-of-Interest Craze

by Michael Kinsley

The Westinghouse Corporation, which builds nuclear plants (or at least tries to), got the urge recently to sue a few uranium producers. Westinghouse has been caught in a squeeze by the enormous increase in the price of uranium, and it suspects these American companies of conspiring with foreign governments in violation of the antitrust laws. This seems a reasonable suspicion, since most of these uranium producers are also oil companies with some experience in this sort of hanky-panky. And while Westinghouse is a respectable enough company, well able to pay its legal bills, it had the hardest time trying to find a law firm to take its case. Everywhere the company turned, it faced a brick wall labeled "conflict of interest."

First Westinghouse hired the huge Chicago law firm of Kirkland & Ellis. The suit bubbled along, with Westinghouse spending $2.5 million in legal fees, when a judge ordered the company to drop Kirkland & Ellis and start again with someone else. The firm's Washington office, it turned out, did work for the American Petroleum Institute, a lobbying group, to which some of the defendants belong. For the same law firm (with 256 lawyers in 2 different locations) to represent both would be a "conflict of interest." Neither client, it was reasoned, could count on the firm's total loyalty.

So Westinghouse turned to another huge midwestern law firm: Jones, Day, Reavis & Pogue of Cleveland (220 lawyers in 3 offices across the country). But Jones, Day had done work in the past for at least six of the 29 companies Westinghouse wants to sue, so the defendants' lawyers got the judge to nix that one too. At last report Westinghouse had found itself a New York law firm to handle the suit, and the oil company defendants had not objected. Perhaps they have made a tactical retreat rather than confront an exasperated judge with the truth: there is probably no law firm in the country big enough to handle an antitrust suit against oil companies that could not be disqualified by the conflict of interest rules these companies were using to thwart Westinghouse. These rules have evolved from their original purpose into one more tactic for litigators. Originally intended to protect those who need legal services, they also can have the perverse effect of denying services to those who need them. (In this case, obviously the oil companies were not actually afraid of divided loyalties; their objections were intended to make trouble.)

In journalism and politics, as well as law, "conflict of interest" has evolved

Michael Kinsley is the managing editor of The New Republic *and a contributing editor of* The Washington Monthly. *He denies that this is a conflict of interest.*

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into a monstrous no-no, a subject of obsessive concern and elaborate rules, but one that benefits from little common-sense thinking. The specter of "conflict of interest" arises whenever an individual or an institution is involved with more than one goal or person or institution at the same time. This happens to cover a great deal of modern life. Most of life may well be sinful, but surely not because it involves so many "conflicts of interest." What exactly is objectionable about a conflict of interest? Is it a conflict of interest for a mother to have more than one child? Jack Anderson probably could make it seem so. The media are full of charges of "conflict of interest" that never explain what is wrong about the situations they describe. Many of those situations seem to fall into a few broad categories, which I have listed here.

Where's the Conflict?

1. The confluence of interest. A passionately pro-Israeli article, let us say, appears in a national magazine. The author is identified as a professor of history, but he does not reveal that he is also on the board of the American-Israeli Public Affairs Committee, the Zionist lobby. (Or the reverse: an anti-Israeli article by an officer of the American Friends of the PLO.) Spokesmen for the other side accuse the author of a "conflict of interest" and denounce the magazine for failing to reveal the connection when it published the article.

Well, where is the conflict? A person feels strongly about a public interest. In service of that strong feeling, he does two things: he joins a lobbying organization, and he writes an article expressing his viewpoint. There is no attempt to hide the strength of his feelings in the article; quite the opposite—the purpose is to express those feelings as vividly and persuasively as possible. The magazine's failure to reveal the official connection is also harmless. Knowing that a passionate Zionist (or anti-Zionist) is also a member of a Zionist (or anti-Zionist) organization adds nothing to a reader's ability to evaluate this person's arguments.

Would it be any worse if the person were a *paid employee* of the lobbying organization, hired to promote the organization's opinions in magazine articles? Suppose a PR man for the nuclear industry writes an article arguing vehemently for nuclear power. Suppose this writer isn't really an advocate of nuclear power, but is only doing it for the money. Well, so what? As an editor, I naturally would be suspicious of any article that came to me in which some institutional connection had been concealed. But if the facts checked out, and the opinions were clearly presented and well reasoned, I would not refuse an article only because of some outside connection of the author's, even one that involved money. No doubt this attitude will get me in trouble some day.

This phony conflict, actually a confluence of interest, arises in government as well as in journalism. My fellow *Washington Monthly* contributing editor, Tom Bethell, fell victim to this particular fallacy in an article in the October *Harper's*. He was fulminating about environmentalists, and their efforts to impose U.S. environmental standards on projects built outside the United States that are funded by the Export-Import Bank. An environmental group has sued the Ex-Im Bank, and the Justice Department, it seems, has been unenthusiastic in coming to the Bank's defense. Bethell says this is because the assistant attorney general for the Lands and Natural Resources division, James Moorman, used to work for the Sierra Club. He calls this a "conflict of interest," though an "ideological, not financial" one. Bethell doesn't make clear whether Moorman's defect is having worked for the Sierra Club, or whether it is his being an environmentalist. If it is the former, I refer him to the next category, "form

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over substance conflicts": what difference would it make if Moorman, though a passionate environmentalist, had never joined the Sierra Club? He'd still be unsympathetic to defending the Ex-Im Bank against a suit by environmentalists.

But if his real objection is that the man making the Justice Department's decisions about environmental lawsuits is an environmentalist, that is another thing entirely, a question of who he is rather than what he does. And there is surely no conflict of interest. Moorman believes in a cause. He used to advance that cause at the Sierra Club, now he does it at the Justice Department. That is his job. He makes no attempt to hide his sympathies. Presumably President Carter chose him for this policy-level job precisely because of his environmental sympathies. It is nonsense to suggest that someone in this position should be "objective" and that evidence of a past commitment to a particular set of beliefs represents a "conflict of interest." The fact that his previous—or even concurrent—behavior comports with his openly expressed opinions is reassuring, not objectionable.

2. *The form-over-substance conflict.* This is a corollary of the myth of objectivity. In 1972 there was an enormous fuss when it appeared that the Newspaper Guild, the union for journalists, might endorse George McGovern for president. For an organization of journalists to officially declare support for a presidential candidate, it was argued, would create a conflict of interest with their duty to report objectively on the presidential campaign. Newspaper journalists, unlike writers for opinion magazines, are not supposed to present their opinions on the subjects they write about. Indeed, they are supposed to have no opinions at all.

But surely these arguments were a triumph of form over substance. Do you suppose that failing to reveal their preference between Nixon and McGovern in 1972 meant that journalists had no preference? People who are informed and intelligent will develop opinions; it cannot be otherwise. A conflict of interest is not created when they make their opinions known. If anything, revealing the opinion *alleviates* the danger the conflict of interest poses, by allowing the newspaper reader to take this opinion (otherwise unknown) into account.

Comparing this situation to the one described in the first category shows the confusion surrounding the concept of conflict of interest. In the first instance people who are supposed to have opinions are accused of a conflict when they *fail to reveal* some fact that merely confirms opinions they are already known to have. In this category people who are supposed not to have opinions are accused of a conflict if they *reveal* opinions that would otherwise not be known. In the first case there is no real conflict. In this case the conflict—between the inevitable human tendency to have opinions and the institutional need to pretend not to have them—exists whether or not the opinion is expressed. The best we can hope for from reporters is that their opinions won't prevent them from providing a fair and balanced presentation of the facts.

Form-over-substance conflicts of interest abound in both the legal and political worlds. Judges have been much more reluctant than journalists to abandon their own myth of objectivity. So it was a scoop when Steven Brill, the law columnist for *Esquire*, gleefully zapped Chief Justice Warren Burger in that magazine's September 12 issue. Brill found himself chatting with Burger at last summer's American Bar Association convention, and Burger began teasing him about the Myron Farber case. "Do you think you have special privileges like this guy Farber does?" Burger allegedly asked Brill. Brill reported Justice Lewis Powell, the soul of propriety, had to nudge Burger away to avoid more indiscretions. As a result of this

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published exchange, Brill writes (correctly), Burger may have to disqualify himself if the Farber case reaches the Supreme Court.

But why? Even if Burger hadn't said a word, he still would have had an opinion. I'll bet even Justice Powell has a casual opinion about the Farber case, based on what he reads in the papers. It's ridiculous to suppose that these intelligent men can turn their judgmental capacities on and off like a spigot. The best we can hope for from judges is that their opinions do not become rigid and immune from new facts that might cause them to change.

Politicians, of course, are not supposed to be "objective." But they are supposed to be, in some vaguer way, "non-biased." This leads to a lot of form-over-substance foolishness. We elect a peanut farmer as president, then he makes a great show of putting his peanut warehouse in a "blind trust." He won't know whether he still owns that peanut warehouse, and therefore his policies as president will not be biased in favor of peanuts or agriculture. But a man's lifelong attitudes do not change so easily. If we did not want a president who was basically sympathetic to agriculture and who had some feel and understanding for the business of agriculture, we should not have elected this one. It is an insult to President Carter to suppose that his basic sympathies—and his ability to rise above them when he feels the national interest should take precedence—will be very much affected by where his own money is invested.

3. The speculative conflict of interest. This is the one that brought Westinghouse so much grief. It is most prevalent in the legal world, where it is believed that all efforts must be made to avoid the possibility that a conflict *might* arise, no matter what trouble and expense this might cause. The trouble and expense usually occur to the clients. The main effect of the legal profession's elaborate conflict-of-interest rules is to create new business for lawyers. Another effect is to *create* discord and conflict, by looking for situations where it might occur and forcing the parties to hire separate lawyers "just in case."

An actual conflict of interest in the law would be one lawyer representing both sides in a trial. Almost as clearly, it would be a conflict for one lawyer to represent both sides negotiating a contract. From here the legal conflict rules take off into speculation. Even if the parties have already negotiated the contract, they must hire separate lawyers in case one lawyer sees something disadvantageous to one side. Or even two parties on the same side of a contract—joint buyers of a business, say—may have to get separate lawyers in case their interests diverge. Rest assured that in the Westinghouse case, all 29 defendants have their own law firms—large ones—duplicating one another's work.

Most large law firms have to use computers to tell them when they have a conflict of interest. Every time a new client, or a new piece of business from an old client, comes in, they run it through the computer, checking it against all the other work they're doing or ever have done for everybody else. It's hard to see how a lawyer's zeal in representing a client would be diminished by a conflicting loyalty he wouldn't even know about without the help of a computer.

4. The penny-ante conflict. The Lewiston Morning Tribune of Lewiston, Idaho, assigned a reporter to write a feature on the newspaper's own conflicts of interest. The feature quotes the paper's managing editor talking proudly about its elevated conflict-of-interest standards of recent years. In the past, he said, "When the circus came to town, some guy would always come in and pass out 50 tickets. We're not accepting those types of gifts anymore."

Well, this can be seen as a triumph for journalistic integrity, or it can be seen as an insult to the reporters of the *Lewiston Morning Tribune.* The article does not say whether the paper's coverage of the circus has become

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more objective and balanced since the free tickets disappeared.

Passing out freebies can make for real conflicts, but in the penny-ante situation, the amounts involved are too laughably petty to cause a problem. If the circus sent someone down to the newsroom passing out thousand-dollar bills and asking for pictures on the front page, that would be conflict of interest.

It's no tragedy when reporters have to buy their own tickets to the circus, but sometimes penny-ante conflict-of-interest rules can be harmful. A few months ago, a man named Robert Angelotti was fired as administrator of the Agriculture Department's Food Safety and Quality Service Division, allegedly for accepting $14 worth of meals from a friend who is a "food consultant" employed by the industry. In fact, Angelotti was done in by other bureaucrats who resented his apparently successful efforts to reorganize and modernize his department. There was no evidence the $14 affected Angelotti's job performance, which was superior. It is nearly impossible to fire a civil servant for sloth or incompetence, both of which are widespread, but the government's penny-ante conflict-of-interest rules permitted Angelotti's enemies to bounce him expeditiously for his $14 indiscretion.

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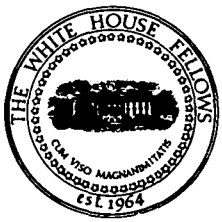

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Some Conflicts are Real

Of course real conflicts of interest do exist, as in the case where a public servant or a journalist receives a large sum of money or other significant favor from someone to whom they can be useful in their jobs. Here, a reasonable presumption arises that the benefactor wishes to exert influence and the beneficiary is willing to be exerted upon. There is a point—somewhere between circus tickets and a suitcase full of hundred-dollar bills—where the assumption that there's no quid pro quo disappears. David Gartner, President Carter's nominee for a seat on the Commodity Futures Trading Commission, turned out to have received $72,000 worth of stock in a food commodities firm from a major Democratic contributor who is also involved in commodities. *That* is a conflict of interest, both because of the source and amount, and because of the stake it would have given Gartner in his own decisions.

There is also room for legitimate concern about potential conflicts of interest, though not those that require a computer to be uncovered. One example is the unsavory habit, in places like *The New York Review of Books*, of friends reviewing one another's books. Unlike the case of the Zionist official writing a pro-Israeli article, knowing about the connection is not superfluous information here, and it ought not to be hidden. If it is out in the open it is difficult to see how the situation can be called a conflict. Indeed, refusing to publish reviews of books written by friends of the author is going too far in service of

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"objectivity." The friend might bring a valuable perspective a stranger couldn't offer. A negative review by a friend might carry *more* weight than one by a more "objective" reviewer. A total ban on book reviews by friends would be a good example of a conflict-of-interest rule working to the detriment of the very people—the readers—it is intended to protect.

The Triumph of Lawyerthink

Our obsession with conflicts of interest is another example of the triumph of lawyerthink. By their logic, human beings should be single-mindedly in pursuit of only one goal—in service of only one client—at one time. By the standards of the legal profession, for example, I am clearly violating my fiduciary duty to *The New Republic* by writing this article for *The Washington Monthly*. How can I possibly serve two competing liberal magazines at the same time? The notion that the human heart can sincerely maintain dual loyalties is foreign to the lawyer; any such feelings are by their nature illegitimate.

The extremely suspicious attitude of lawyers toward conflicts of interest is merely a corollary of the basic rule that a lawyer owes the client a duty of unwavering advocacy. It's interesting to compare lawyers' intolerance for personal or emotional complexities, which they call conflicts of interest, with what I would call the intellectual conflicts of interests that are allowed—often even required—in the service of legal advocacy. It is not considered a conflict of interest, for example, to defend a client you believe to be guilty or put on the witness stand someone you believe to be lying. Yours is not to judge, it is said, yours is to advocate. Vigorous advocacy on both sides is supposed to guarantee the truth; the truth is nobody's client, and nobody owes it a duty of advocacy.

The legal profession has evolved an elaborate set of rules—varying slightly in different jurisdictions—to determine when a conflict of interest exists. It's often said the purpose of these rules is to avoid *even the appearance of conflict*. The truth is that these rules usually work to avoid *only* the appearance of conflict. Lawyers have done to their conflict-of-interest rules exactly what they've done to the antitrust laws. The purpose of elaborating, studying, and refining complex antitrust rules is not to imbue in lawyers and their clients the spirit of free competition. Rather, the finely honed definitions and subtle distinctions are intended to help lawyers tell their clients exactly how anti-competitive they can be without stepping over the line. The same is true of conflict-of-interest rules. The District of Columbia Bar Association is in the process of revising its rules about the "revolving door"—the practice, common to Washington lawyers, of moving back and forth between government agencies and law firms representing clients that deal with these agencies. The first draft of the new rules was very tough, but the process of shaving corners and splitting hairs has proceeded far enough by now to assure the coming round of two-year defectors from the Carter administration plenty of lucrative offers.

A recent issue of *District Lawyer*, the official journal of the D.C. Bar, contained an amusing example of how the hair-splitting works. The subject was the ethical rules against fee splitting—one lawyer giving part of his fee to another lawyer. The purpose of the rules is to prevent kickbacks from one lawyer to another for steering business his way. Such payments would pose a "conflict of interest" between a lawyer's own financial gain and the good of his clients. The D.C. disciplinary rules permit fee-splitting between lawyers only "in proportion to the services performed and responsibility assumed by each." But the author of the article offers a hypothetical problem: "A friend of the family is seriously injured in an automobile accident. . . . You. . .

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perceive that the case has the potential for a substantial fee." You have no expertise in personal injury law, but you want a chunk of that fee. You can refer your friend to a personal injury lawyer, but once you've done that, "it is often difficult to perform services justifying an adequate fee." What a dilemma! The author proposes solving the problem "by substituting the word 'or' for 'and' or interpreting the Code so that the provisions of the Rule are read in the alternative." In other words, if you are willing to "assume responsibility," you should be able to get a chunk of the client's fee even if you've done virtually no work on his behalf, other than steer him to another lawyer. Here is a fine legal mind at work: in a single stroke he has managed to gut a rule of all its meaning, without in any way reducing its length or complexity.

Nitpicking Rules

Social, business, and political relationships in our complex society can work only if people can count on the good faith of those they deal with and rely upon. The purpose of conflict-of-interest rules is to ensure that this good faith exists. But what we need is a renewed understanding of the fundamental conflicts these nitpicking rules obscure. We need to realize that complex relationships are inevitable and don't necessarily involve a conflict of interest.

The assumption underlying conflict-of-interest rules is that if those whose assigned role is to advocate are sufficiently pure in their devotion to their cause, and if those whose assigned role is to be "objective" are sufficiently pure of any devotion at all, the interplay of these forces will guarantee truth and justice. This is a lawyer's *procedural* view of how things ought to work. It relieves people of any personal obligation to truth and justice.

It is also naive. Human beings cannot be single-minded advocates nor can they be completely objective. Nor

IS THIS THE SHAPE OF THE FUTURE?

Will Houston be the corporate capital of the U.S. by the year 2000? Will Dallas be the center of banking? One thing is sure: Texas business is striving for such a role. Call it the Sunbelt, the Southern Rim, the New South or whatever—it all adds up to big money, building its power base in the state Dun & Bradstreet cited as having the most favorable business climate in America.

The Texas Observer, with new editor Jim Hightower, has its independent eye on all this, offering in-depth reporting and lively analysis every two weeks. Texas is the front line of the corporate struggle, and the *Observer* is the one best way to know what's going on. Which is why John Kenneth Galbraith has written: "I think the *Observer* ranks with the *Progressive* as one of the two most useful papers in the United States."

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should they be. The exaggerated concern over conflicts of interest ignores the complexity of a society where law firms can have hundreds of lawyers spread across the country dealing with thousands of clients. Or on another level, the complexity of human motivation, where judges are also parents and newspaper readers, and journalists are people with opinions and biases, and business competitors are close friends. All three of those situations can (and have) been construed as constituting a conflict of interest at some time or another—even though they are ordinary and common in everyday life.

The complexity of human motives crops up all the time in stories charging "conflict of interest" even though the stories invariably emphasize the conflict and ignore the complexity. In most stories charging conflict of interest, what has actually been uncovered is merely the appearance of a conflict, not necessarily a scandalous fact, although it is usually reported as such.

Maybe Milliken Was Right

In June *The Washington Monthly* reported that Chip Carter, with no apparent qualifications other than being the President's son, took a $26,500-a-year job with the now-notorious Bill Milliken, who was receiving the Carter family's active help in getting government grants. It is a situation that seemed to reek of conflict; Milliken could be seen as paying back the Carters for their aid by hiring their unemployed son. But put the same facts in another light and they come out a bit differently. Maybe Milliken was right when he said, "Chip and I really hit it off. He visited a project in the Bronx with me and got turned on by it." Maybe Chip Carter genuinely believed in what Milliken was doing—setting up teaching programs in ghettos—and wanted to do whatever he could to help. Maybe. When the facts were disclosed Milliken and Carter parted ways (thereby reinforcing the suspicion that they themselves believed they were in a conflict-of-interest situation), but the "facts" themselves did not constitute the conflict of interest.

They rarely do. It's the motivation behind the facts that separates the real conflict from the make believe, and reporters who write about an appearance of conflict as if that alone constitutes wrongdoing miss the point. Disclose the facts, sure. In all but those cases of "confluence of interest" where disclosure is superfluous, it is good to get all the facts out in the open. It is the people who try to hide any hint of a possible conflict who heighten suspicion about their motivations—if they have nothing to hide they should put their cards on the table.

But when they've done that, we should do them the courtesy of treating an appearance of a conflict as an *appearance*. We should not automatically impute criminality or immorality and those who have disclosed the facts have a right to be indignant when we do. But we should have the right to question them about the appearance and they should not feel indignant when questioned.

Conflict-of-interest rules attempt to avoid the need for those questions, to make the crucial judgments for us. And, by focusing on appearances, they do it in a way that is often frivolous and wrong. The real cost of our conflict-of-interest obsession is that it distracts us from an important and difficult task—constantly probing the good faith of those in positions of trust, and of ourselves. ■

Special Christmas Gift Offer

See Inside Front Cover

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Roxie Munro

Where to Stay in Washington

Washington is a popular site for the annual get-togethers of practically every profession, organization, and public interest group, perhaps because it's where decisions are made and funds allocated that affect their well-being. There's a good chance a meeting you might be attending is at one or all of the following hotels—the city's three largest—located within a few blocks of each other, uptown, on Connecticut Avenue near Rock Creek Park.

They're also worth knowing about if you're coming to Washington for other purposes, alone or with family, for they have some advantages—a wide range of services (all have shops, recreational facilities, and special rates not often available in motels or the smaller hotels) and a location away from the bustle, yet very convenient for downtown shopping and Washington sight-seeing.

Sheraton Park, 2660 Woodley Rd. N.W., 265-2000. This is a complex of three buildings—the main Sheraton Park Hotel, the Wardman Tower, and the Sheraton Motor Inn. While the rates are a bit lower than the Shoreham or Hilton, there's a catch—especially if you like to sleep past 8 or 9 a.m. or have claustrophobic tendencies. It's the 900-room Sheraton Washington going up just a few yards behind the main hotel, which will be torn down on completion of the new building next summer. In the meantime request accommodations in either of the other two buildings. The Wardman Tower is the historic apartment/hotel that has housed Vice Presidents, Supreme Court Justices, and other officials over the past 50 years. Renovation and re-decorating is nearly completed, with some of the rooms and suites furnished with antique furniture and art objects. The Motor Inn, just across the street from the Shoreham, has a modern decor and is convenient for those who want easier access to their car during their stay. As a last choice, ask for *front* rooms in the main hotel, which hasn't been kept in tip-top decorator shape due to its imminent demise. Regardless of where you stay, you have a health club with exercise machines and sauna at your disposal and a free shuttle that will take you to the Mall near the Washington Monument. The following rates apply to all sections: Singles, $42-$51; Doubles, $54-$63; Suites, $90-$180. Children under 18 free; discounts for retirees, government employees, students and faculty, and other groups. Several good package and family plans. Parking $3.40 per night.

Shoreham Americana, 2500 Calvert St., N.W., 234-0700. Here you can jog before breakfast around the 11-acre park-like grounds or, if you've a room with a balcony, just sit and enjoy the view. The rooms are spacious and attractively furnished in traditional style (some with fireplaces—although non-working). The pool and day/night tennis courts are open in season, the locker room with sauna year-round. Singles, $48-$64; Doubles, $62-$78; Suites, $95-$295. Children under 14 free; discounts for embassies, government employees, unions, and other groups. Parking $3 per night.

Washington Hilton, 1919 Connecticut Ave. N.W., 483-3000. While it's located closer to town and doesn't offer the pastoral setting of the other two hotels, the Hilton has some other advantages. Built in the 1960s, the hotel has an up-to-date, contemporary air throughout. The rooms are smaller, but all are bright and attractive, with refrigerators and closed circuit TV movies. Because the hotel is situated on a hill, many rooms have a wonderful view overlooking the city. The adult and kiddie pools, day/night tennis courts, and accompanying Gazebo outdoor cafe are open as long as the weather permits; the sauna year-round. Limousines to Dulles and National Airports stop hourly, and it's just a few minutes walk to the subway station. Singles, $44-$68 (the better the view, the higher the rate); Doubles, $59-$83; Suites, $120 and up. All children free, regardless of age, if in the same room with a parent; discounts to government employees and other groups. Parking $4.50 per night.

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All three hotels have the usual supply of coffee shops, cafes, restaurants, and quick food shops, but they are, for the most part, ordinary hotel stock—the food ranges from mediocre to good and the prices range from overpriced to way overpriced. But that's no cause for despair, for there are plenty of other options once you step outside. The hotels are located in one of Washington's most delightful and colorful neighborhoods—and that's reflected in the numerous restaurants in the area. Most of these places can be honestly called neighborhood restaurants—they don't have the pretensions of many of the restaurants downtown, nor the extravagant prices of so many Georgetown restaurants. There is an ethnic flavor to many of the restaurants in the Connecticut Avenue area—and at prices that are almost always reasonable.

Just a few blocks' walk up Columbia Road from the Hilton you find yourself in the Latin American community and in front of the **Omega**, 1856 Columbia Rd., where the line probably will be extending out the door, waiting for a chance to enjoy the simple, inexpensive, very authentic Cuban dishes (lots of black beans and rice, and chicken and seafood). A few doors up you'll find fewer crowds but still very good, reasonable Cuban food at **El Dorado**, 1832 Columbia. At **El Caribe**, 1828 Columbia, you can dip into South American and Mexican dishes as well, in a more elaborate setting for a bit higher prices.

Some other places to go for Latin food: **La Paella**, 2637 Connecticut Ave., serves good Argentinian as well as Spanish dishes, but if they fail the Sangria and Argentinian folk decor compensate. At **La Fonda**, 1639 R St., you'll find fairly standard Mexican fare (heavy on enchiladas), accompanied by guitar and harp musicians. Right next door flamenco dancers entertain guests at **El Bodegon**, 1637 R St., a good, solid Spanish restaurant.

You've also got a wide choice of Middle East restaurants. The best ratings go to **Arabian Nights**, 2915 Connecticut; **Khyber Pass**, 2309 Calvert, is just OK; and the report is that the consistency of Mama Ayesha's cous-cous and other dishes at the **Calvert Cafe**, 1967 Calvert, is becoming uneven. Go to **Gaylord's**, 1731 Connecticut, for a wide choice of good curries. The traditional Greek dishes at the **Greek Village**, 1712 Connecticut, are also good (plus belly dancer upstairs at dinnertime). The **Junkanoo**, 1629 Connecticut Ave., is probably the only place in town where you can hear calypso music, and also the only place that can claim it was the first stop Wilbur Mills made on his way to the Tidal Basin.

The Italians are well represented at both **Pettito's**, 2653 Connecticut, and **Caffe Italiano**, 3516 Connecticut—simple, homey restaurants serving good, simple Italian food. The opposite is true at **Roma**, 3419 Connecticut, where the overdone garden decor and background music have given the cuisine the back seat. The best time to try **Anna Maria's**, 1737 Connecticut, is Saturday night at 2 a.m., when everyplace else is closing and you've still got two more hours of energy left. The hour and the jazz combo will help you forget that $4.75 is a lot for a not great small pizza.

On to the Far East. Of the three Chinese restaurants, **Chin's**, 2614 Connecticut, is definitely last choice. **Yenching Palace**, 3524 Connecticut, is uneven but worth a try—the dumplings, in particular, are quite good. David Lee's **Empress**, 1875 Connecticut, is known for its large portions and the Peking duck you can get without ordering in advance. The one Japanese restaurant, **Tokyo Sukiyaki**, 1736 Connecticut, leaves a bit to be desired, and we'd suggest instead going just a few blocks away to **La Fregate**, 2020 Florida Ave., for some very good Vietnamese dishes.

You have to do some real scouting to find a good French restaurant in this area, but when you come across **L'Escargot**, 3309 Connecticut, or **Avignone Freres**, 1777 Columbia Rd., you won't be disappointed. At **L'Escargot**, you'll find inexpensive wines and some very good provincial dishes, although served with more efficiency than grace. **Avignone Freres** was formerly a bakery and catering service, but now serves its delicious pastries, pates, salads, and other light delicacies at brunch, lunch and dinner in a charming tea room atmosphere.

And if you've been craving some genuine goulash, you can have it. **Csiko's**, 3601 Connecticut, open only for dinner, serves great Hungarian dishes, enhanced by a violinist and dulcimer player strolling through the 1930s decor.

—Carol Trueblood

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The Constitution, the Press, and the Rest of Us

by Robert M. Kaus

Maybe it's best to start from personal experience. Every now and then over the past few years I have turned on my television to see an earnest reporter, standing on the steps of a courthouse, explaining his determination to go to jail rather than to reveal a confidential source. My feelings in this situation are inevitably mixed. On the one hand, it is impressive to see anybody standing up for principle at some personal cost. Having a fondness for journalistic types, I would rather identify with them than the judges and prosecutors trying to coerce their testimony. Yet, probably for that very reason, I am also a bit resentful—because, in explaining their role as news-gatherers, these reporters invariably emphasize how different they are from me. It is their constitutional function, I am told, to risk official wrath, snoop out information and disclose it to the public. As a member of that public, all I presumably must do is stay tuned. The legal distinctions the reporters draw seem to grow into a social gulf between them and me. I begin to wonder, why can't I be a glamorous and privileged investigator? Who chooses these people? After all, these are constitutional rights they're talking about. Don't I have the same right to be a reporter as they do?

I felt these pangs of jealousy most recently while watching Myron Farber—the *New York Times* reporter who refused to show his notes to the judge in a murder trial—stoically puffing a pipe behind the bars of a New Jersey jail. But the Farber case, I was told, was only the climax of a very bad year for the ideal of a free press, particularly in the Supreme Court. As Lyle Denniston of *The Washington Star* reported in a funereal post-mortem, "Six major decisions came out, and the press clearly lost, or seemed to, in five." Those five included one that was "beyond understanding" (Ben Bradlee)—"the most dangerous ruling the Court has made in memory" (Howard K. Smith).

"The Court's view," wrote Charles Seib in *The Washington Post*, "seems to be that the First Amendment's guarantee of a free press is little more

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than a nod by the Framers of the Constitution in the direction of the idea that a free flow of information is vital to self-government." While licking their wounds, newsmen knew who to blame: they were victims of "Mr. Nixon's Revenge" (Tom Wicker), of the "Hohenzollern" mentality of the Burger court which surfaced in a "reflex hostility to every attempt to hold the government to account or question its motives" (Jack Anderson). And, looking ahead, journalists saw nothing but trouble. There are a host of First Amendment cases on the Supreme Court's docket—cases as important, as significant, as those decided last spring.

It is hard to disagree with some of the press' charges. Last spring's decisions contained several potentially disastrous interpretations of the Bill of Rights. But if those decisions had a unifying theme, it was in a series of attacks—as yet inconclusive—on the idea that the press, and the people who work in the press, enjoy constitutional protections unavailable to ordinary citizens. As an ordinary citizen, I appreciated that sentiment, and it seemed to me that much of the outcry was only journalists' anger at being stripped of their pretensions to special treatment. The issue that most of the press ignored, or at least repressed, was the elitist nature of many of its own arguments. That issue is worth a closer look, since the current Supreme Court term will see a continuation, and possibly a resolution, of the conflict over the press' claims of special privileges.

The Corporate Vision

During the past decade, it seems that every time reporters have felt threatened by the courts, their response has been to say, in effect, "you can't do this to us, we're reporters." The "journalist's privilege"—the right to refuse to testify before grand juries and courts—is only the most prominent of the special rights reporters have claimed. Newsmen have also argued for special rights of access to sources of government information, special protection from libel suits, and special freedom from police searches and wiretapping.

What all these press arguments have in common is the claim that a distinct class of people called "the press" have

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rights not enjoyed by the general populace. The arguments share a particular vision of both the First Amendment and American society. It is a corporate vision, in the sense that it views society as a single organism in which different citizens play different roles and have different legal needs. Academics (who at times seek their own special rights) would be the brains in this social corpus and reporters the "eyes and ears," leaving the rest of us to fight for the positions below the neck.

As social visions go, this corporate ideal is nothing new. Students of feudalism may find it depressingly familiar. But its application to the First Amendment is an innovation. The Constitution traditionally has evoked a vision of citizens undifferentiated in their political roles and possessing equal measures of constitutional protection. The rule of "one man, one vote" provides the classic example of the traditional "universal" approach. Newsmen, in that view, are merely citizens who use their rights every working day.

The clash between the corporate and universalist theories may be heard in the background of most of the dramatic judicial confrontations over press rights. In these battles the corporate view has a lot going for it. In particular, it responds to a currently popular perception of media power. Let's face it, the corporate theory says, the average Joe has little opportunity either to gather information or to express his views. This ability is concentrated in a few institutions, called the press, who alone can keep people informed. Rather than clinging to a 19th-century ideal of a participative society, in which every citizen is part journalist and part scholar, we should face up to modern reality and give the press the legal tools it needs to get its job done.

Stewart's Famous Speech

The corporate view received its biggest boost in late 1974, when Supreme Court Justice Potter Stewart delivered a now-famous speech at Yale Law School. First Amendment cases, Stewart argued, had concentrated excessively on the "rights of isolated individuals"—"the soapbox orator, the nonconformist pamphleteer, the religious evangelist." If the framers of the Constitution had meant to grant the "organized press" no more rights than those individuals, Stewart continued, they would not have written separate phrases into the Bill of Rights protecting freedom "of the press" as well as "freedom of speech." Stewart concluded that the First Amendment confers special status on the press as an institution: "The publishing business is, in short, the only organized private business that is given explicit constitutional protection."

It was an indication of the press' attitude toward this theme when *The Washington Post*—a member of the "organized press" if there ever was one—took the unusual step of reprinting Stewart's speech on its editorial page. The *Post* called it "a more substantial contribution to the public understanding of the government-press conflict than almost anything else that has been said by a government official in the recent past."

In the three years following Stewart's speech, the corporate theory faded from public view; yet its influence spread among the legal and journalistic establishments. Student-run law reviews published articles endorsing Stewart's analysis. Lawyers nodded knowingly when Justice Powell, a darling of many established constitutional pundits, endorsed special rights of press access to prisons. It seemed, as respected First Amendment scholar Melville Nimmer proclaimed, that the corporate theory was "an idea whose time is past due."

But the hope that the corporate view would sweep the Supreme Court without a fight was dashed in the waning months of last spring's term. Chief Justice Burger fired the first salvo in a concurring opinion tacked onto a decision on corporate political expenditures. "The Court has not yet squarely resolved," Burger accurately

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asserted, "whether the Press Clause confers upon the 'institutional press' any freedom from government restraint not enjoyed by all others." He also pointed out that even the most ardent defenders of special press rights, such as Nimmer, concede the historical evidence indicates "the framers" added the Press Clause merely to make sure written speech was covered along with oral speech.

Had Burger's blast been written by another justice, it might have set off more shock waves than it did. However, the tendency to explain it away as the idiosyncratic raving of a press-hater did not disappear until the Court dropped the real bombshell of the season a month later in the form of *Stanford Daily v. Zurcher*. In the *Stanford* decision the Court authorized police to obtain warrants to search the homes and offices of persons not suspected of criminal activity. The decision broke new ground in allowing such searches for all evidence relating to a crime, rather than just for weapons or contraband. Moreover, the Court declined an open invitation to single out newsrooms as having any categorical right to less intrusive procedures. In other words, the Court treated the privacy rights of the public and the press shabbily, but at least it mistreated both groups equally.

The last of the "series of blows against the press" (Seib) fell when the Court ruled that the general public has no right of access to any particular information about prison conditions—and that the press has no greater right than the public.

Even these setbacks, however, will probably not be enough to deter journalists who have latched onto the idea of special privileges. Editorial doomsaying to the contrary, a count of the ballots of the justices shows that they fell one vote short of conclusively rejecting the corporate theory. Neither Powell nor Justice Stevens have committed themselves on the issue. The prospect that they will adopt Stewart's view is real enough to attract a good supply of test cases from embattled reporters.

The Farber case is one indication that journalists haven't abandoned broad privilege claims. In another area, libel—where the Burger Court has already raised the possibility of special protection for the media—we may expect to find lawyers for the *Post* and *Times* in court bending every nuance in the direction of special privileges.

If the press can't get privileges from the courts, there's always the Congress. Several bills have been introduced that would exempt press offices from the type of search approved in *Stanford Daily*. As of now, the major press organizations are officially backing the approach of Senator Birch Bayh, which would protect everybody, not just newspapers. But this tactical alliance with the man-on-the-street already shows signs of weakness. It may be easier for Congress to help out only the group yelling the loudest—the press—rather than risk the ire of law enforcement officials by enacting broader protection.

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A Small Professional Caste

It is too bad that so much civil libertarian effort will continue to be spent trying to establish press rights as the rights of a small professional caste. By supporting constitutional preference for reporters, these efforts will inflate the influence of the established press while inevitably discriminating against the inquiring citizen, the spare-time scholar, and the community activist—the individuals whose speech rights Stewart belittles. In practice, Stewart's theory is to the established press what the "capital crisis" is to Wall Street—a fancy-sounding rationale for the pursuit of special interests. It is not the only way to read the First Amendment. We could work instead to fashion a definition of the "press" that includes both wage-earning reporters and anyone else who chooses, in his own way, to tell the public his discoveries or views. The privileges given this broad class of "press" would be more limited than those reporters now demand, but like the traditional rights of free speech, they would be available to each and every citizen. And in all the areas of current First Amendment conflict, it is this universal approach, and not the corporate approach, which consistently focuses our attention on the real issues.

The "journalist's privilege" question, and *The New York Times*' Farber case, provide a good illustration of the impact of these different approaches. Farber claimed that the First Amendment and New Jersey's shield law protected all the notes and information he accumulated while investigating 13 suspicious deaths at a New Jersey hospital. If he were required to give up his notes, he argues, future journalists would find it harder to locate sources and hence to investigate important stories. Sounds good so far. But the privileges journalists like Farber have claimed are so sweeping that they could not be extended to non-journalists without opening the door to the destruction of our system of judicial fact-finding, depending as it does on the general obligation to testify. Indeed, the more immunity from testimony journalists demand, the more they must search for a narrow definition of "the press" in order to limit the potential impact of the privilege. So a fledgling freelance writer who looked into the New Jersey deaths would probably not get the same protection Farber would get. As for an intern at the New Jersey hospital who simply grew suspicious of the deaths and decided to check into them—forget it. He is not a "journalist" under any workable standard, and he would have to either reveal his contacts and notes or go directly to jail.

But, the *Times* might argue, our hypothetical intern could save himself this hassle simply by phoning up Farber instead of investigating his suspicions himself. In this perverse fashion, a broad journalist's privilege could force citizens to leak to reporters rather than make inquiries on their own. The professional news media would be granted a constitutional franchise to conduct investigations. Of course, as we are constantly reminded, journalists are professionals and they usually do a pretty good job of getting out the facts. But wouldn't we prefer a rule encouraging the curious probings of millions of private citizens who might sense something fishy at their jobs, or in their governments?

So, while requiring the testimony of reporters raises problems, they are not problems only reporters have. There is something offensive about prying secrets out of *anyone's* brain. For example, antiwar campaigns in the 1960s probably were hurt by prosecutorial attempts to force those who attended clandestine meetings to testify about what they saw and heard. One federal prosecutor, Guy Goodwin, made a career of hauling suspected radicals before grand juries and then jailing them when they refused to testify about their lives and their friends. To prevent this sort of abuse, we should define more carefully the circumstances under which judges can compel testimony, or authorize those methods

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only in investigations of the gravest offenses. In his 1972 "journalist's privilege" case, *New York Times* reporter Earl Caldwell argued for an immunity that would evaporate if the information sought by a court was both relevant to a legitimate inquiry and unobtainable by less intrusive means. Yet these seem like fair precautions to take before any citizen—journalist or not—is hauled in front of a judge under threat of contempt.

In another field of First Amendment conflict—that of access to government information—a fixation on press rights once more obscures the basic issue: how much of what information should be kept secret? The Freedom of Information Act provides a simple model for resolving this problem—legitimate secrets are to be kept secret from both press and public; information that need not be secret is available for universal view. You can argue about which files to throw open, but does anybody doubt that is the right question to ask? The corporate approach, emphasizing the rights of the press to documents and information, would tend to create a new category of confidential data—"For Journalists' Eyes Only"—and then impose on newsmen a blind professional obligation to pass along whatever other secrets they could lay their hands on. It doesn't take much time to realize that this solution simply appeases the press without accommodating the broader public interest.

Libel cases are a third important area in which special protection for the press is unjustified and unnecessary. In a libel suit against CBS producer Barry Lando, which the Supreme Court will decide this term, an appellate court ruled that "reporters and broadcasters" may refuse to answer questions concerning the thought processes that guide their investigations. But why restrict the rule to "reporters and broadcasters?" Is their speech so much more deserving of protection than that of an angry homeowner who attacks corruption at a city council meeting, a radical group that distributes leaflets door-to-door, or a businessman who criticizes the illegal practices of a competitor? Libel suits can "chill" anyone's urge to speak freely—and the crucial line can be drawn without granting reporters greater freedom to defame than others.

In the long run, the corporate theory probably serves the group it seeks to protect—the established press—worst of all. The reason is simple: with special privileges comes the justification for imposing special responsibilities. The more the press paints itself as a small occupational group straddling the only meaningful channels of communication, the greater the pressure will be to make sure that its power is used wisely. In the past, this pressure has appeared in the form of proposals like "right to reply" statutes in which a newspaper would be forced to print rebuttals to editorial criticism. Waiting in the wings are even more ambitious schemes of state-enforced public "access" to the pages of private journals. Such "reforms" will be difficult to resist if the press officially acknowledges and subsidizes its dominant position by obtaining grants of exceptional rights. The corporate theory is more than the self-serving image of the professional reporter. It is the theory that, in broadcasting, brought us the FCC and the fairness doctrine. The press must choose the ground on which it will stand—and the danger of state regulation of the print media, whether through public "access" or broad FCC-style oversight, is too great to risk.

A universal approach to press rights won't give the institutional press all the privileges it might want. In particular, no egalitarian version of the "newsman's privilege" will remove the possibility that reporters will on occasion have to go to jail if they want to protect confidential sources. For those journalists who insist they must make absolute promises of confidentiality in order to do their jobs, reporting will inevitably be a risky occupation. Let their badge of professionalism be a willingness to take those risks, rather than a willingness to seek special legal privileges. ■

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Richard Reeves on Political Books

Arthur Hadley, a political writer who's been around, and Robert Teeter, who was Richard Nixon's pollster, met each other in 1973 and began talking about what political types often talk about: Who are the nearly 70 million non-voters? Why don't they vote? What might happen if they did?

Those three questions are now the subtitle of a book that came out of those conversations: *The Empty Polling Booth*, written by Hadley and published by Prentice-Hall. Hadley and Teeter decided to *do* something about the endless conversations and ruminations about why almost half of their eligible countrymen did not take the trouble to participate in the selection of their leader, the President of the United States. After the 1976 election, Teeter's firm, Market Opinion Research, polled 2,006 of the almost 70 million men and women who refrained from choosing between Gerald Ford and Jimmy Carter—that, as they say, is a statistically valid random sample—then Hadley went out and interviewed 100 of the refrainers (his word) in some depth.

The result is a valuable, interesting book, not something you'd want to take on vacation, but something worth reading and worth thinking about. In fact, Hadley found his own conclusions frightening. What might happen if they *did* vote? Not a hell of a lot, Hadley decides, because most of his refrainers are pretty much like the rest of us, maybe a little poorer, a little less well-educated, a little more cynical, a little blacker. More consider themselves Democrats than Republicans—the ratio is not that different from those who vote—and it might not make any significant difference if they went to the polls and didn't feel guilty about staying home, which Hadley found they did to the point of lying and saying they were registered and had voted.

But what will happen if they continue to refrain from exercising their democratic right and are joined by more and more of the non-refrainers, the voters, which has been happening since 1960? Then, Hadley warns, we all could be in great trouble. He bases that concern on a fascinating historical statistic: "Three important times in our history the number of those not voting has climbed over 45 per cent—just before the election of Andrew Jackson, just before the election of Franklin D. Roosevelt, and now."

The point is that, with 46 per cent now not voting, something big may be about to happen, as it did when past non-voters decided to come out and changed America by voting for Jackson and Roosevelt. (Eighty-five per cent of first-time voters chose Roosevelt over Herbert Hoover in

Richard Reeves is the author of Convention. *His column is a regular feature of* The Washington Monthly.

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1932; 1.15 million people voted when Jackson won in 1828, compared with 355,000 who had come out four years earlier.) "The non-voters," Hadley writes, "tap our political system with an explosive mass, waiting for some trigger to change the course of history."

That last may be too strong. I suspect that they may be just waiting for a candidate they like. Edward Kennedy is the obvious example—and Hadley's interviews indicate that the politicians most admired by non-voters are Kennedy and George Wallace. But, after dismissing the fact that the United States, where 54 per cent of eligible adults now vote, is a little bit better governed than Italy, where 93 per cent do, I have to respect Hadley's fears. "Voters by their nature and by the act of voting have made a commitment to a party, a cause, an idea," he says. "They make basic shifts in allegiances slowly, if at all. Non-voters. . . hold no such convictions. They can shift views or form alliances suddenly, dramatically. Because of the present large pool of non-voters, the future of our country could substantially change in any coming election."

My respect for Hadley and Teeter's work was enhanced by some of the surprising conclusions they reached. They concluded that complex election laws and restrictive registration practices were less of a factor in non-voting than I believed. Only 12 per cent of their sample said they did not vote because of legalistic problems—and most of those were out of town on Election Day or had just moved from one place to another. Besides, in North Dakota, which doesn't even have registration regulations, the decline in voting participation between 1960 and 1976 was 9.1 per cent, compared with the national figure of nine per cent.

So, maybe a lot of folks out there just don't give a damn or have made a conscious decision not to participate—come to think of it, I know quite a few very comfortable, well-educated folk who have made that very decision, either because they think one vote doesn't matter or because they are actively, if minimally, protesting the current state of Politics Americana. One of those interviewed, a woman who works in a city manager's office in Florida, said it best: "When politicians are not interested in you, you lose interest in them." Hadley uses her to humanize the fact that the numbers of informed, solid non-voting citizens is increasing dramatically—and, he thinks, very dangerously.

Teeter asked the 2,006 non-voters ten questions in the original interviews and compared their answers with those of voters. The most striking disparity was not on questions involving social class, cynicism or laziness. It was on this oddball query: "Do you think it's better to plan your life way ahead, or would you say life is too much a matter of luck to plan ahead very far?"

Among voters, 57 per cent of respondents believed life was a matter of planning and 38 per cent cited luck. The numbers were practically reversed among non-voters: 54 per cent said luck and 37 per cent said planning. If that's the key, voting participation may continue to decline simply because Americans are becoming more and more fatalistic.

What would make these people come out and do what they themselves see as their duty? "Better candidates" was the usual answer. That may be self-serving, but it can't be ignored. I found *The Empty Polling Booth* to be another argument for limiting elected tenure—perhaps to eight years with a forced four-year retirement before a name could appear on a ballot again. The non-voters, as Hadley points out, are not boobs. They have perceived, quite accurately, that American politicians have become professional candidates—running for office is what they do for a living—and, like any professionals, they have become more and more responsive to the internal needs of their business and peer group. We should consider doing a favor for non-voters, ourselves, and politicians by not giving elected officials the years to become quite so professional. ■

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political book notes

Public affairs books to be published in November.

The American Way of Life Need Not Be Hazardous to Your Health. John W. Farquhar, M.D. Norton, $9.95.

Black Consciousness in South Africa. Millard Arnold, ed. Random House, $12.95. In May 1976 Stephen Biko, the leader of the Black Consciousness movement, appeared in a South African courtroom as a defense witness in a trial of nine other blacks. They had been charged under South Africa's notorious Terrorism Act with various alleged efforts to undermine the government, but what was really on trial was Black Consciousness itself, the movement and philosophy founded by Biko as a university student that has so radically changed the way South African blacks think about themselves.

For four-and-a-half days defense and prosecution lawyers took testimony from Biko, who was speaking publicly for the first time in the three years since he had been officially silenced by the government. As it turns out, the courtroom testimony was Biko's last public appearance; a little more than a year later he died in a South African jail.

This book is an edited version of Biko's testimony, and it is powerful, eloquent stuff. The meat of it is the rationale and basis of Black Consciousness, a movement that represented his attempt to wrestle from the white apartheid government the psychological grasp it had on the minds of blacks.

He is a modern-day martyr now, and as such has become a figure larger than life; but if you want to see some of the human dimensions of Biko, his philosophy, his pragmatism, his political instincts, if you want to see why he was, and is, a truly important figure in contemporary Africa, this is a good place to look.

—*Frank Packard*

The Bold and Magnificent Dream: America's Founding Years. Bruce Catton, William Catton. Doubleday, $12.50.

The Bunker: The History of the Reich Chancellery Group. James P. O'Donnell. Houghton Mifflin, $13.95.

Citizen Participation in America: Essays on the State of the Art. Stuart Langton, ed. Lexington, $12.95. Nine essays on citizen participation that miss the point. We learn a lot here about the "state of the art" of citizen participation—at the grassroots level, in national politics, in the ever-growing public interest movement—but almost nothing about what the rise in activist citizen participation has meant in American politics or why it has been accompanied by a decrease in voting participation.

Criminal Violence, Criminal Justice. Charles E. Silberman. Random House, $15. Silberman, the Director of the Study of the Law and Science, has written an important book on crime. Its value lies primarily in the author's willingness to refute some of the cliched solutions liberals and conservatives have spouted as gospel for years.

"Since the turn of the century," he writes, "liberals have underestimated the relevance of the criminal justice system and have opposed the search for more effective law enforcement as mere sympton alleviation—the equivalent of putting a Band-Aid on a cancerous sore. . . . But if liberals have been too preoccupied with underlying causes, conservatives have exaggerated the gains that can be wrung from tougher law enforcement."

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In his chapter on police, for example, Silberman says, "the traditional remedies simply will not work," even though liberals and conservatives continue to press for their particular answers to crime. He says the belief of the conservatives that putting more cops on the street will reduce crime isn't true. The billions spent on new technology also have done virtually nothing to reduce crime. But at the same time, the belief that the Warren Court made life easier for criminals is also false: "There is no evidence to suggest that policemen make fewer arrests, or that prosecutors secure fewer convictions, because of Supreme Court decisions safeguarding the rights of the accused; on the contrary, the evidence runs the other way," he writes.

His section on the courts is likewise revealing. It is not true, Silberman says, that the courts are more lenient than they used to be; or that disparate sentencing practices undermine the deterrent power of the criminal law; or that plea bargaining distorts the judicial process (or that it is a recent innovation or the product of a heavy caseload); or that the guilty escape punishment.

"Most criminal courts undermine respect for law—not by their results, but by the shabby, haphazard way in which they are run. Files are misplaced; jailed defendants are brought to court on the wrong day; victims and witnesses are not notified of the date on which they are to appear; prosecutors and defense lawyers are badly prepared," and so on. The miracle is that the courts work in spite of themselves, says Silberman, but they do work.

Towards juvenile courts he is much less sympathetic, making the strong, but by no means novel, case that they have "encouraged criminal behavior in several ways." The evidence he marshalls to make his various cases is for the most part impressive and persuasive.

Silberman is at his weakest when he attempts to analyze why people commit crimes, and in particular, why there is so much crime among blacks. But this book's strengths far outshine its weaknesses, offering some badly needed insights into the problems of crime and criminals.

—*Joseph Nocera*

Crisis in Health Care. Jordan Braverman. Acropolis, $10.

The Cultural Pattern in American Politics. Robert Kelley. Knopf, $15.

The Culture of Narcissism: American Life in an Age of Diminishing Expectations. Christopher Lasch. Norton, $11.95.

The Death of Christian Culture. John Senior. Arlington House, $10.

The Derelicts of Company K: A Sociological Study of Demoralization. Tamotsu Shibutani. University of California, $14.95.

The Duel of the Giants: China and Russia in Asia. Drew Middleton. Scribner's, $10.95.

Emancipation and Equal Rights: Politics and Constitutionalism in the Civil War Era. Herman Belz. Norton, $10.95.

Employment of Blacks in the South: A Perspective in the 1960's. Ray Marshall, Virgil L. Christian, Jr., eds. University of Texas, $17.95.

Essays on Literature and Politics, 1932-1972. Philip Rahv; Arabel J. Porter, Andrew J. Dvosin, eds. Houghton Mifflin, $15.

The Federal Presence: Architecture, Politics and Symbols in U.S. Government Buildings. Lois A. Craig, The Staff of the Federal Architecture Project. MIT Press, $37.50. This is a coffee table book with substance. It takes us from Thomas Jefferson, whose building designs endorsed the classical style that characterizes most government buildings, to the growth of Washington in the 19th century; from the history of those pork barrel builders, the Army Corps of Engineers, to the birth in 1948 of the currently scandal-ridden General Services Administration.

The authors conclude that the growth of the federal government as a builder has closely paralleled the growth of federal power. Washington, they say, has become a "haven, a refuge" for a government increasingly isolated from its citizens by an antiseptic array of white marble.

—*Janet Marinelli*

An Idea and Its Servants: UNESCO from Within. Richard Hoggart. Oxford, $13.95.

Journeys Down the Line: Building the Trans-Alaska Pipeline. Robert Mead. Doubleday, $12.95.

Legal Aspects of International Terrorism. Alona E. Evans, John F. Murphy, eds. Lexington, $34.95.

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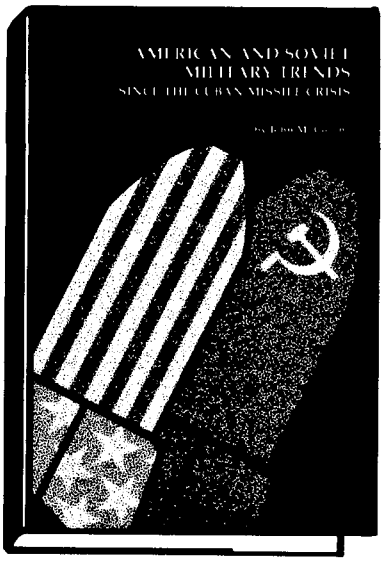
The book Congress did not print



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Make-Believe Presidents: Illusions of Power, from McKinley to Carter. Nicholas von Hoffman. Pantheon, $8.95. Some revisionist history from von Hoffman. He's out to prove that nothing we've seen in recent presidents is anything new or different. Nixon's (ol' droopy jowls, von Hoffman calls him) involvement in Watergate was only the culmination of a tradition that's been going on for a hundred years. And the problems recent presidents have had getting control of the bureaucracy have plagued presidents ever since the civil service system was established. It's a romp through the excesses and peccadillos of the Roosevelts, Harding, Hoover, and the rest—and it's fun.

Medical Mystery: The Training of Doctors in the United States. Steven Jonas, M.D. Norton, $15.

Medical School. Donald Drake. Rawson Associates, $9.95.

National Transportation Policy: A Study of Studies. Harvey A. Levine. Lexington, $16.95.

The New Politics of Food. Don F. Hadwiger, William P. Browne. Lexington, $19.95.

Origins of the Israeli Polity. Dan Horowitz, Moshe Lissak. University of Chicago, $19.

Police Computer Technology. Kent W. Colton, ed. Lexington, $21.95.

Quaker Experiences in International Conciliation. C. H. Mike Yarrow. Yale, $10.

Regional Impacts of Federal Fiscal Policy: Theory and Estimation of Economic Incidence. Thanos Catsambas. Lexington, $14.

Roots of the American Working Class: The Industrialization of Crafts in Newark, 1800-1860. Susan E. Hirsch. University of Pennsylvania, $14.

Safire's Political Dictionary: An Enlarged, Up-to-Date Edition of the New Language of Politics. William Safire. Random House, $15.95. *New York Times* columnist *terrible* Bill Safire sticks it to this town thrice weekly in lively little essays that display his talent for the telling story and damning phrase. A lot of people who read him also dislike, distrust, and/or fear him. But he loves them or at least, he loves the town, and certainly the language that cons, cajoles, twists, turns, and makes it all happen. This latest version of *Safire's Political Dictionary* is a triumph. Where else could you learn that the phrase *advice and consent* was probably coined by merry old England's King Sigiraed in 759 and that the obnoxiously simplistic slogan *better red than dead* was the British nuclear disarmament movement's mutilation of a subtler Bertrand Russell thought. Do you know what a *bedsheet ballot* is? Or that politicians hate the word *pol?* Or that the *big apple* was jive for a Harlem nightspot? Safire's dictionary offers over 800 pages of brief (200-300 word) essays on the words that tell what politics is all about.

He weaves history, anecdote, and analysis into a lively picture that illuminates other points of view in different times. The essay on *moderate*, for example, traces views from Eisenhower's *policy of moderation*, through Stevenson, Harriman, ("there is no such word as moderate in the democratic vocabulary"), LBJ, who in 1955 chose to term himself a "moderate" (how a word keynotes a time!), and the bitter 1964 Republican civil war where those hoping to save Rockefeller from the advancing conservative swarms tried to trade in his liberal label for the "less offensive" moderate tag. Quotes from William F. Buckley, Robert Clive, Leon Gambetta (a 19th-century French Premier), and Francis Bacon also enliven the entry.

Safire makes a few mistakes. He attributes the decline in the art of political speech to "most politicians turn[ing] to the speechwriter for the complete job . . ." and not "collaborating enough"—when we all know that the tide on that little problem has turned, that this administration's speeches are often pedestrian precisely because the speechwriters can't get a phrase in edgewise. But these are tiny quibbles. A clearly guiding intelligence free of the column's heavily partisan slant is evident throughout, and so is a quiet humor. (*Unfinished business* is defined as "the reason usually given after much public soul-searching, for running again.") The book is thoroughly researched and consistently well-written.

—*Blythe Babyak*

A Saga of Wealth: The Rise of the Texas Oilmen. James Presley. Putnam, $14.95.

Scandal and Reform: Controlling Police Corruption. Lawrence W. Sherman. University of California, $14.50.

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Smoke: Another Jimmy Carter Adventure. Alexander Cockburn, James Ridgeway. Times, $7.95. (fiction)

The Social Background of the American Communist Party Elites. Harvey Klehr. Hoover Institution.

To Build A Castle: My Life as a Dissenter. Vladimir Bukovsky. Viking, $10.95. There is, legend says, an old Russian technique for hunting bear. Bait is placed in a tree. Suspended by rope from a higher limb is a log which interferes with the bear's access to the bait. He brushes aside the log and starts on the bait. The log swings back and hits him. Angrily, the bear swats the wood harder. It comes back with more force. The process goes on until the log clonks him for good.

Bukovsky likens the life of a dissenter in the Soviet Union to the bear's situation. You reach out for the right to express yourself and you brush against the State. Jail. Then a period of freedom in which to work again for human rights. But each time, the log comes back to hit you harder until, finally. . . .

Bukovsky first ran afoul of the KGB at the age of 17, when he took part in a satirical school play. Between then and his expulsion from the Soviet Union 17 years later, he spent 12 years in prisons, work camps, and psychiatric hospitals. What has come out of those years is one of the most eloquent testimonials in the growing body of literature spawned by Soviet terror. (Sharing the credit is Michael Scammell's fine translation and illuminating annotations.)

During his stays in jail, Bukovsky writes, he used every scrap of paper, every bare space on the wall or floor, to draw a castle in the minutest detail—turrets and tapestries, chandeliers and secret passages, tables, goblets, fireplaces and guests. It was his mantra, his refuge against the KGB's efforts to break him down. He forayed from his castle only to bedevil the authorities. He organized hunger strikes and made good use of the Soviet law that requires every letter of complaint from a prisoner to be answered and investigated. Once, as the sole political prisoner in a convict camp, he organized a letter-writing collective, which saw to it that about 400 letters of complaint left the camp every day.

In his ever-briefer out-of-jail periods, Bukovsky met with foreign correspondents. He gave interviews, some secretly

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filmed for television, and documented the authorities' desperate measures to suppress the growing political dissent in the Soviet Union, including the use of psychiatric hospitals as instruments of terror.

The value of getting the information to the West lay only partly in having it spread throughout the Soviet Union by the BBC, the Voice of America, and Radio Liberty. More important was the sensitivity of the Soviet leaders to the contempt of world opinion. Americans who derided President Carter's (short-lived) human rights initiatives or who thought the result was only to harden Soviet punitive measures against dissidence would do well to read *To Build a Castle*. As the Bukovskys of the world see it, the more furiously the regime rages, the more difficult it becomes to know who, finally, is the bear and who the log.

—*Leonard Reed*

United States and the Two China Regimes: Conflict or Cooperation? Ramon H. Myers, ed. Hoover Institution.

Who Is To Be Tried? Incident at Sagamihara. Sueyoshi Ohtani. ITS, $14.95. Japan is the only nation to be the victim of nuclear warfare, the only major capitalist society to have emerged from feudalism within this century, and the only major world power whose constitution explicitly renounces warfare.

Japan is also among the few nations whose institutions were shaped and modeled after the United States. The process by which the United States, in the person of Douglas MacArthur, transformed Japanese society is retold in William Manchester's recent biography of the General.

And according to Ohtani, post-war Japan is a society with social problems familiar to Americans—corrupt, corporate-dominated politics, commercialization of daily life, and large corporations that dominate the lives of their employees and the larger society. Japan's business-oriented Liberal Democratic Party—neither liberal nor particularly democratic—has held a stranglehold over the government since the war, and the Socialists, Communists, Social Democrats, the smaller leftist groups, have spent more time squabbling with each other than challenging the ruling party.

—*Harry Lesser*

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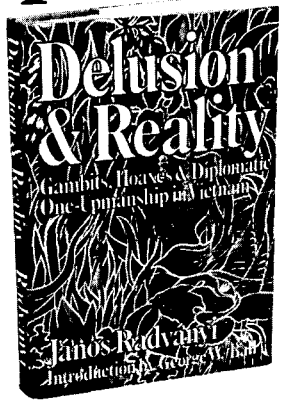

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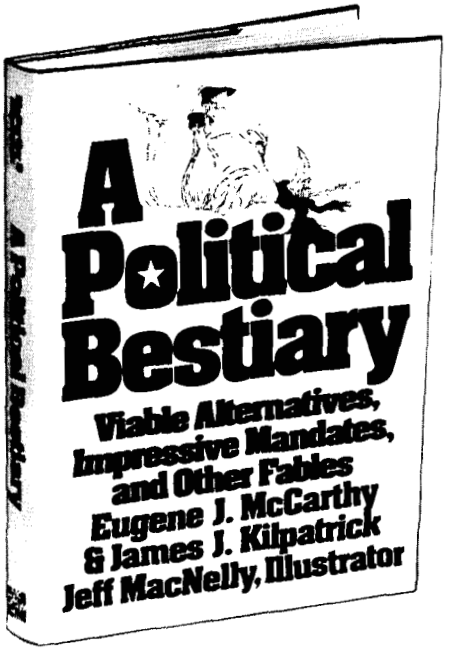

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